



The American Bar Association Journal

ISSUED QUARTERLY

BY THE AMERICAN BAR ASSOCIATION

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The American Bar Association Journal

VOL. III

APRIL, 1917

No. 2

I.

SPECIAL ANNOUNCEMENTS.

ANNUAL MEETING.

The annual meeting of the American Bar Association will be held at **Saratoga Springs, New York**, on Tuesday, Wednesday and Thursday, September 4, 5, 6, 1917.

Headquarters will be at the Grand Union Hotel, where the offices of the Secretary and Treasurer will be located. The offices will be open for registration of members and delegates, and for sale of dinner tickets on Monday morning, September 3, at 10 o'clock.

The business sessions of the Association will be held and the formal addresses before it will be delivered in The Saratoga Casino.

FIRST SESSION: TUESDAY, SEPTEMBER 4, 10 A. M.

Address of welcome by Edgar T. Brackett, of Saratoga Springs.

George Sutherland, of Utah, President of the Association, will deliver the President's address.

SECOND SESSION: TUESDAY, SEPTEMBER 4, 8 P. M.

Thomas W. Hardwick, of Georgia, United States Senator, will deliver an address, "The Interstate Commerce Clause of the Constitution of the United States."

RECEPTION.

A reception will be given by the New York State Bar Association to the President and members and guests of the American Bar Association and ladies accompanying them, on Tuesday, September 4, at 9.30 P. M., in the Ball Room, Grand Union Hotel.

THIRD SESSION: WEDNESDAY, SEPTEMBER 5, 10 A. M.

The reports of standing and special committees will be presented and discussed. They will be printed in the July number of *THE AMERICAN BAR ASSOCIATION JOURNAL*.

EXCURSION.

There will be an excursion to Lake George by rail and of two hours by steamer on the Lake, Wednesday afternoon, September 5, for members and guests of the Association and ladies accompanying them.

FOURTH SESSION: WEDNESDAY, SEPTEMBER 5, 8 P. M.

Charles E. Hughes, of New York, will deliver an address.

FIFTH SESSION: THURSDAY, SEPTEMBER 6, 10 A. M.

William H. Burges, of Texas, will deliver an address.

Reports of committees not previously disposed of will be presented and discussed.

SIXTH SESSION: THURSDAY, SEPTEMBER 6, 2.30 P. M.

Unfinished business.

ANNUAL DINNER.

The annual dinner of the Association will be given in the Ball Room of the Grand Union Hotel, on Thursday, September 6, 7 P. M.

COMMITTEES, AFFILIATED BODIES, ETC.

The National Conference of Commissioners on Uniform State Laws will convene on Wednesday, August 29, 11 A. M., in the Appellate Division Room, Town Hall.

The sessions of the Conference will continue on Thursday, Friday, Saturday and Monday, August 30, 31, September 1 and 3.

The Executive Committee of the Conference will meet on Wednesday, August 29, 10 A. M., in the Appellate Division Room, Town Hall.

A Special Conference of Representatives of Bar Associations will meet on Monday, September 3. There will be three sessions of the Conference, 10 A. M., 2 P. M. and 8 P. M., respectively.

The morning and afternoon sessions will be held in the Ball Room, Grand Union Hotel, and the evening session in The Saratoga Casino.

It is the purpose of the Committee in charge of the program for this Conference to invite thereto three delegates from each State Bar Association and two delegates from each Local Bar Association. The full program will be printed in the July JOURNAL.

The Section of Legal Education will hold its sessions in the Court of Appeals Room, Convention Hall. There will be two sessions of the Section on Monday, September 3, 10.30 A. M. and 8 P. M. A third session will be held on Tuesday, September 4, 2.30 P. M.

The Comparative Law Bureau will hold its session on Monday, September 3, 2 P. M., in the Appellate Division Room, Town Hall.

The American Institute of Criminal Law and Criminology will meet in the Court of Appeals Room, Convention Hall, Monday, September 3, 2 P. M. A second session will be held Monday, 8.30 P. M., in the Town Hall, and a third session Tuesday, September 4, 2 P. M., also in the Town Hall.

The Section of American Society of Military Law will meet Tuesday, September 4, 3 P. M., in the Ordinary, adjoining the Ball Room, Grand Union Hotel.

The Executive Committee of the Association will meet on Monday, September 3, 9 P. M., in Room No. 212, Grand Union Hotel.

The General Council of the Association will meet in the Court of Appeals Room, Convention Hall.

The first meeting of the Council will be held on Tuesday, September 4, 9 A. M.

The Judicial Section will hold its session on Tuesday, September 4, 2 P. M., in the Ball Room, Grand Union Hotel.

There will be an informal dinner for all members of the Section, and officers, members of the Executive Committee and former presidents of the American Bar Association, on Monday evening, September 3, 7 P. M., in the Ball Room, Grand Union Hotel.

The Section of Patent, Trade-Mark and Copyright Law will meet on Tuesday, September 4, 3 P. M., in The Saratoga Casino (second floor).

CHRONOLOGICAL RÉSUMÉ.

AUGUST.

WEDNESDAY, 29TH.

10.00 A. M. Executive Committee of the National Conference of Commissioners on Uniform State Laws.

WEDNESDAY, 29TH, TO MONDAY, SEPTEMBER 3, BOTH INCLUSIVE.

National Conference of Commissioners on Uniform State Laws.

SEPTEMBER.

MONDAY, 3D.

10.00 A. M. Special Conference of representatives of American Bar Association and delegates from State and Local Bar Associations.

10.00 A. M. Closing Session of National Conference of Commissioners on Uniform State Laws.

10.30 A. M. Section of Legal Education.

2.00 P. M. Special Conference of Bar Association Delegates.

2.00 P. M. Bureau of Comparative Law.

2.00 P. M. American Institute of Criminal Law and Criminology.

7.00 P. M. Informal dinner, Judicial Section, Grand Union Hotel.

8.00 P. M. Special Conference of Bar Association Delegates.

8.00 P. M. Section of Legal Education.

8.30 P. M. American Institute of Criminal Law and Criminology.

9.00 P. M. Executive Committee of the Association.

TUESDAY, 4TH.

- 9.00 A. M. General Council of the Association.
10.00 A. M. First session American Bar Association.
 Address of welcome, Edgar T. Brackett.
 President's address, George Sutherland.
2.00 P. M. Judicial Section.
2.00 P. M. American Institute of Criminal Law and Crimi-
 nology (Section of American Society of Military Law).
2.30 P. M. Section of Legal Education.
3.00 P. M. Section of Patent, Trade-Mark and Copyright
 Law.
3.00 P. M. Society of Military Law.
8.00 P. M. Second session American Bar Association.
 Address, Thomas W. Hardwick.
9.30 P. M. Reception to members and guests by the New York
 State Bar Association.

WEDNESDAY, 5TH.

- 10.00 A. M. Third session American Bar Association. Presen-
 tation of reports of committees.
2.00 P. M. Excursion on Lake George.
8.00 P. M. Fourth session American Bar Association.
 Address, Charles E. Hughes.

THURSDAY, 6TH.

- 10.00 A. M. Fifth session American Bar Association.
 Address, William H. Burges.
 Unfinished business.
2.30 P. M. Sixth session American Bar Association.
 Unfinished business.
7.00 P. M. Annual dinner American Bar Association.

HOTEL RESERVATIONS.

Irving I. Goldsmith, 10 Citizens National Bank Building, Saratoga Springs, N. Y., has kindly consented to take charge of the reservations for members and delegates. In writing to Mr. Goldsmith, please state preference of hotels, time of arrival,

period for which the rooms are desired, whether with or without bath, and how many persons will occupy each room.

A list of available hotels will be found on supplementary pages VII and VIII, at the back of this JOURNAL.

SPECIAL NOTICE TO CHAIRMEN OF COMMITTEES.

All printed reports of committees of the American Bar Association for presentation at the annual meeting will be published in the July number of the JOURNAL, and such reports will *not* be printed and distributed to members in separate pamphlet form. The Secretary should receive reports from the respective committees in final form not later than June 15, 1917. *Chairmen of committees are requested to bear this notice in mind.*

The following rooms at the Grand Union Hotel are available for purposes of Committee meetings, and will be assigned on application of Chairmen to the Secretary, viz., Nos. 213, 218, 219, 230, and 235 (all on second floor).

GEORGE WHITELOCK, *Secretary*,
1416 Munsey Bldg., Baltimore, Md.

II.

GENERAL ANNOUNCEMENTS.

REQUEST TO MEMBERS.

The date of admission of each member appears for the first time in the Annual Report (see alphabetical list). Using in this way 10,000 dates obtained from numerous records, some mistakes have probably occurred. Each member is therefore requested to examine the date of his own admission as noted in the 1916 list, and to call the attention of the Secretary to errors.

CONSTITUTIONAL PROVISIONS AND STATE ASSOCIATIONS.

On September 23, 1916, the Secretary, in a letter to the President and Secretary of each state bar association called attention to the amendments recently made to the Constitution of the Association, which read as follows:

"The President of each state bar association recognized by this Association, which accepts this provision, shall become a member *ex-officio* of the General Council, provided he be a member of the American Bar Association, and provided further that votes in the General Council be by states whenever a roll call is asked.

"The Secretary of each state bar association recognized by this Association, which accepts this provision, shall become a member *ex-officio* of the Local Council for such state, provided he be a member of the American Bar Association."

The request was made that this matter be brought before the various state bar associations, and that the Secretary be advised of any action thereon.

A number of state associations do not convene until spring or early summer, and are holding the matter for submission to the respective associations at that time.

Twenty associations sent no response to the communication, and the Secretary has again communicated with these associations.

At this writing 20 associations have advised the Secretary of acceptance of the provisions, as follows:

Colorado,	Maine,	New York,
Connecticut,	Massachusetts,	North Carolina,
Dist. of Col.,	Minnesota,	Rhode Island,
Idaho,	Missouri,	Ohio,
Illinois,	Nebraska,	Wyoming,
Indiana,	Nevada,	Far East American
Kansas,	New Jersey,	Bar Association.

THE FEDERAL PROCEDURE BILL.

By some mistake the wrong bill was passed by the last Congress and there was not sufficient time to correct the error before adjournment. The bill will be reintroduced in both the Senate and House immediately upon the convening of the new Congress on April 2. While the new number is not now known, the bill will be sufficiently identified by any Senator or Congressman under the description, "The American Bar Association's Federal Procedure Bill." Manifestly, it will have to go through the form of being again reported from both the Senate and House Judiciary Committees. Each member of the Bar Association will serve a public duty by communicating with the President and with friends in the Senate and the House, urging upon them the necessity for the passage of the bill at this session. The Committee on Uniform Judicial Procedure, of which Thomas W. Shelton, Norfolk, Virginia, is Chairman, will be glad to furnish any further information desired. The Chairman believes that the passage of the bill depends only upon sufficient pressure to bring about a vote.

FERNAND LABORI.

Maitre Fernand Labori, Bâtonnier de l'Ordre des Avocats à la Cour d'Appel de Paris, 1911-1913, and an honorary member of the Association, died in Paris, on March 14, 1917, after pro-

tracted illness. Born in Rheims, April 18, 1860, and admitted in 1884, Maître Labori attained high distinction at the French Bar. His heroic defense of Captain Dreyfus, his chivalrous support of Emile Zola, and his success as counsel for Mme. Caillaux in the murder trial of 1914, are vivid in the memory of Americans.

All the members of the Association who saw Maître Labori at Montreal will recall his winning personality and the eloquent speech at the dinner on September 3, 1913, in the course of which he said: "I see in this meeting a new and significant aspect of the *entente cordiale*, to which our great nation of France, and I am sure the great British nation, is so deeply attached. Thinking of the American side, I see a particularly kind attention to the sister republic."

On August 31, 1916, Maître Labori cabled from Fontainebleau to the Secretary at Chicago as follows: "On the occasion of the meeting of the American Bar Association I pray you to present to the President of the Association and to all of our members my respect and loyal remembrance, and also my best regards."

CANADIAN BAR ASSOCIATION.

The Secretary is in receipt of the Proceedings of the First and Second Annual Meetings of the Canadian Bar Association, the last of which was held in Toronto. Sir James Aikins, K. C., was again elected president. The Third Annual Meeting has been fixed for Wednesday, Thursday and Friday, the last week of August or the first week of September, the date to be definitely fixed later. It will be held in Winnipeg, Manitoba. The following members of the American Bar Association are Honorary Members of the Canadian Bar Association:

James M. Beck, New York.

Henry D. Estabrook, New York.

Henry B. F. Macfarland, District of Columbia.

BOOKS BELONGING TO THE AMERICAN BAR
ASSOCIATION.

By-Law VI provides that books acquired by the Association shall be deposited in charge of the New York City Bar Association, subject to the call of this Association if it ever desires to withdraw or consult them. The Secretary has accordingly conferred with the Librarian of the New York City Bar Association concerning the deposit of such books with liberty of access, subject, of course, to the rules of the latter association concerning membership in that body, or introduction of guests. The matter was referred to the Executive Committee of the New York City Bar Association, which on January 5, 1917, passed the following resolution:

"Resolved, That this association agrees to the deposit of the books of the American Bar Association as provided for in its By-Law quoted in the letter of Mr. George Whitelock of November 25, 1916, with the understanding, however, that this association commits itself to no greater degree of care in the custody and preservation of the books so deposited than it exercises in the case of its own books of a similar sort."

The Secretary thereupon, on January 26, 1917, expressed to the said library the following 22 volumes, each marked "Property of the American Bar Association":

- Notable Middle Templars. 1 vol.
- Middle Temple Records. 3 vols.
- Middle Temple Records (Calendar).
- Middle Temple Records (Index).
- The Evolution of Governments and Laws. *Allen.*
- Second Pan-American Congress. *Scott.*
- The Hague Conventions. *Scott.*
- International Courts of Arbitration. *Balch.*
- For Better Relations with Our Latin-American Neighbors. *Bacon.*
- Toward the Danger Mark. *Gigliotti.*
- Anales Diplomaticos y Consulares de Colombia (paper binding). 4 vols. *Uribe.*
- La Reforma Administrativa (paper binding). 1 vol. *Uribe.*

- Derecho Internacional Privado (paper binding). 1 vol.
Hernandez.
- Derecho Mercantil Colombiano. 1 vol. *Uribe.*
- Tratado de Derecho Civil Colombiano. 1 vol. *Champeau y Uribe.*
- A Treatise on Federal Impeachments. *Simpson.*
- South America: Study Suggestions. *Bard.*

BOOKS RECEIVED.

Acknowledgment is made of the receipt by the Secretary of the following books:

- Report of the Library of Congress, 1916.
- A Treatise on Federal Impeachments, by Alexander Simpson.
- Report of the Thirty-third Annual Session of the Georgia Bar Association, 1916.
- Reports Virginia State Bar Association, Vol. XXIX, 1916.
- Report of the Twentieth Annual Meeting of the State Bar Association of Indiana.
- Proceedings of Canadian Bar Association, Vols. 1 and 2, 1916, 1917.
- "The Public Defender," by Mayer C. Goldman, of the New York Bar.
- "Unfair Competition," by W. H. S. Stevens.
- "Attorneys at Law," reprinted from R. C. L., Vol. II, and American Bar Association Canons of Ethics, published for Law School purposes only by the Lawyers Co-operative Publishing Co., Rochester, N. Y.
- "The Man in Court," by Frederic De Witt Wells.
- "Business Competition and the Law," by Gilbert H. Montague.
- Proceedings of the Nineteenth Annual Meeting of the Bar Association of Arkansas, May, 1916.
- Proceedings of the Thirty-seventh Annual Session (1916) of the Ohio State Bar Association.
- West Virginia Legislative Hand Book and Manual and Official Register, 1916. Revised edition.

Proceedings West Virginia Bar Association, Vol. XXXII,
1916.

Proceedings Minnesota State Bar Association, 1916.

MEETINGS OF STATE BAR ASSOCIATIONS IN 1917.

THE twelfth annual meeting of the MISSISSIPPI STATE BAR ASSOCIATION will be held at Greenville on Wednesday, May 2.

THE LOUISIANA BAR ASSOCIATION will meet in Alexandria on May 11 and 12.

THE BAR ASSOCIATION OF ARKANSAS will meet in Little Rock on Tuesday and Wednesday, May 29 and 30.

THE BAR ASSOCIATION OF HAWAII will hold its annual meeting on Wednesday, May 30, at Honolulu.

THE thirty-fourth annual session of the GEORGIA BAR ASSOCIATION will be held at Tybee Island, May 31 and June 1 and 2.

THE ILLINOIS STATE BAR ASSOCIATION will hold its next meeting on May 31, and June 1 and 2, in Danville.

THE NEW JERSEY STATE BAR ASSOCIATION will hold its annual meeting at Hotel Chelsea, Atlantic City, N. J., on June 15 and 16. A special meeting of the association was held on February 10, at Newark, to take action upon proposed legislation before the New Jersey Legislature.

THE MARYLAND STATE BAR ASSOCIATION will hold its annual meeting at Atlantic City, N. J., June 21, 22 and 23. Headquarters will be the Marlboro-Blenheim Hotel.

THE BAR ASSOCIATION OF THE STATE OF NEW HAMPSHIRE will meet on June 23, probably at Laconia.

THE PENNSYLVANIA BAR ASSOCIATION will meet at Bedford Springs, June 26, 27 and 28.

THE WISCONSIN STATE BAR ASSOCIATION will hold its next annual meeting at Madison on June 27, 28 and 29.

The twenty-third annual meeting of the IOWA STATE BAR ASSOCIATION will be held at Council Bluffs, June 28 and 29.

The next annual meeting of the MICHIGAN STATE BAR ASSOCIATION will be held at Grand Rapids on June 29 and 30.

THE KENTUCKY STATE BAR ASSOCIATION will hold its next meeting at Dawson Springs, Thursday and Friday, July 5 and 6.

THE COLORADO BAR ASSOCIATION will meet at Colorado Springs on Friday, July 6.

The next annual meeting of the OHIO STATE BAR ASSOCIATION will be held at Cedar Point, July 10, 11 and 12.

The next meeting of the INDIANA STATE BAR ASSOCIATION will be held at Indianapolis, July 11 and 12.

THE ALABAMA STATE BAR ASSOCIATION will meet at Birmingham on July 12, 13 and 14.

THE SOUTH DAKOTA BAR ASSOCIATION will meet at Sioux Falls, July 18, 19 and 20.

THE WASHINGTON STATE BAR ASSOCIATION and the OREGON BAR ASSOCIATION will hold a joint meeting in Seattle, July 26, 27 and 28. In 1915 the Washington State Bar Association met with the Oregon Bar Association at Portland, and the meeting of 1917 is a return meeting; a joint meeting of these two associations will probably be held in each odd year.

THE SOUTH CAROLINA BAR ASSOCIATION will meet at Greenville during July.

THE MINNESOTA STATE BAR ASSOCIATION will hold its next annual meeting in Minneapolis during the latter part of July or in August, the exact date to be determined later.

THE MONTANA BAR ASSOCIATION will hold its annual meeting in Butte during the month of August.

THE BAR ASSOCIATION OF NORTH DAKOTA will meet at Dickinson during the latter part of August.

THE WEST VIRGINIA BAR ASSOCIATION, by resolution passed at its annual meeting in December, 1916, decided to change the time of the meeting in 1917 to June, July or August, the specific date to be fixed by the Executive Council. The place of meeting is White Sulphur Springs.

THE NEW MEXICO BAR ASSOCIATION will meet in Roswell during October.

III.

CONFERENCE ON CO-OPERATION AMONG BAR ASSOCIATIONS.

A conference of actual and former Presidents of the American Bar Association, Presidents of state bar associations, and members of the Special Committee on Co-operation among Bar Associations, was held in the Green Room, Bellevue-Stratford Hotel, Philadelphia, on Saturday, January 6, 1917, at 10 A. M. The following were in attendance:

FORMER PRESIDENTS OF THE AMERICAN BAR ASSOCIATION.

Moorfield Storey, Boston, Mass.
Francis Rawle, Philadelphia, Pa.
Stephen S. Gregory, Chicago, Ill.
Peter W. Meldrim, Savannah, Ga.
Elihu Root, New York, N. Y. (also member Executive Committee).

PRESIDENTS OF STATE BAR ASSOCIATIONS.

Joseph H. Nathan, Alabama.
Ashley Cockrill, Arkansas (representing; also member Executive Committee).
Thomas J. O'Donnell, Colorado.
Edward A. Harriman, Connecticut (representing).
Chapin Brown, District of Columbia (representing; also member Executive Committee).
James M. Hull, Jr., Georgia (representing).
Albert D. Early, Illinois.
Charles Blood Smith, Kansas (also member Executive Committee).
Charles E. Hibbard, Massachusetts.
Frank Crassweller, Minnesota.
Stephen S. Jewett, New Hampshire.
Frederick W. Gnichtel, New Jersey.
Frederick E. Wadhams, New York (representing; also member Executive Committee).
N. B. Billingsley, Ohio (representing).
Henry Budd, Pennsylvania (representing).
William P. Sheffield, Rhode Island.
George B. Young, Vermont.
Wyndham Stokes, West Virginia (representing).

SPECIAL COMMITTEE ON CO-OPERATION AMONG BAR ASSOCIATIONS.

Julius Henry Cohen, New York, N. Y.

Stiles W. Burr, St. Paul, Minn.

Wm. H. H. Platt, Kansas City, Mo.

Charles A. Boston, New York, N. Y.

John Lowell, Boston, Mass. (also member of Executive Committee).

There were also present in addition to the above:

George Sutherland, President American Bar Association.

George Whitelock, Secretary American Bar Association.

George T. Page, member of the Executive Committee.

William P. Bynum, member of the Executive Committee.

Charles N. Potter, member of the Executive Committee.

Seldon P. Spencer, member of the Executive Committee.

Walter George Smith, member of the Executive Committee.

Upon motion of George T. Page, President George Sutherland was requested to preside over the proceedings of the conference.

The report of the Special Committee on Co-operation among Bar Associations was then read by Chairman Julius Henry Cohen; the report is as follows:

To the Executive Committee of the American Bar Association:

The Committee on Co-operation among Bar Associations makes the following tentative report:

In view of the conference about to be held in Philadelphia between the Executive Committee, the Presidents of state bar associations, and our committee, the committee at this time submits only a tentative report, with the purpose in view of eliciting criticisms and suggestions, and in the light of such criticisms and suggestions to develop a final plan.

Immediately after the appointment of the committee, we held a meeting in Chicago. We have recently held another meeting in New York, and we have come to the conclusion that the success of the Conference of State and Local Bar Associations fully justifies the holding of another conference at or about the same time as the next annual meeting of the American Bar Association. We are of opinion that it is not wise to attempt to create a new or additional section of the American Bar Association. We do feel, however, that the invitation should again be extended not only to state bar associations, but to local bar associations, and that each association should be invited to send a definite

fixed number of delegates. Our suggestion at this time (subject to revision after discussion) is that state bar associations should be invited to send three delegates and local bar associations two delegates. The committee is of opinion that it is much more important now to arouse the interest of state and local bar associations in the movement than it is to devise complete machinery for the operation of such a conference. The committee is of opinion that there should now be worked out a definite program for the next meeting of the conference, that speakers qualified to discuss definite topics should be asked to lead the discussion, and that the topics should be topics in which the Bar of the whole country is interested.

The committee is of opinion that it would be well to select the following three topics for discussion at the next conference:

- (1) How can bar associations help the public?
- (2) How can bar associations help each other?
- (3) How can bar associations help to raise the standards of the profession?

By way of illustration, under these three headings opportunity would be given for exchange of information concerning the work of Committees on Discipline on the eliminating of traditional rules which no longer contribute towards the attainment of justice; the work of the Committees on Unlawful Practice, Professional Ethics, etc., and for the discussion of methods for a better interchange of information between associations. If the next conference should determine to establish a secretariat, with a bureau for the gathering and dissemination of information concerning the activities of state and local bar associations, it will then be time to consider details of machinery and finance for bringing about such a result.

Your committee is of opinion that the better functioning of the Bar as a national body will come about through providing real opportunities for such co-operation. These opportunities should develop naturally. We think the plan we have tentatively suggested is likely to do this.

January 6, 1917.

JULIUS HENRY COHEN, *Chairman*,
STILES W. BURR,
JOHN LOWELL,
W. H. H. PIATT,
CHARLES A. BOSTON.

Upon the request of the Chairman, Elihu Root stated the object and purpose of the conference, and opened the discussion on the above report.

Julius Henry Cohen then addressed the conference and elaborated the matters contained in the report of the special committee, stating the underlying thought of the committee in making its recommendations.

An enthusiastic discussion followed, which was participated in by the representative of every state represented.

Upon motion of William P. Sheffield, seconded by John Lowell, the report of the committee was unanimously adopted.

Upon motion of Charles E. Hibbard, the following resolution was unanimously adopted:

"Resolved, That the five members of the special committee appointed by the American Bar Association, together with five members (to be appointed by the President) of the state bar associations present at this conference, be constituted a committee to make all necessary arrangements for a second conference of state and local associations, to be held at Saratoga Springs, N. Y., at the time of the meeting of the American Bar Association; including the selection of a program and the selecting of suitable persons to lead the discussion upon the several topics; and that Julius Henry Cohen, Chairman of the Special Committee of the Bar Association, be made Chairman of the new committee.

The President thereupon appointed as the additional members of such special committee the following:

CHARLES E. HIBBARD, Pittsfield, Mass.,

ALBERT D. EARLY, Rockford, Ill.,

JOSEPH H. NATHAN, Sheffield, Ala.,

FRANK CRASSWELLER, Duluth, Minn.,

STEPHEN S. JEWETT, Laconia, N. H.

The committee of 10 members then went into session to outline a program for the proposed conference, and on motion the Special Conference of Delegates adjourned.

IV.

CONTRIBUTIONS OF THE COMPARATIVE
LAW BUREAU.

A. INTERNATIONAL PRIVATE LAW AND
JURISPRUDENCE.

The position that every sovereign power has jurisdiction over the realm of air above its territory, seems to be fairly well established by the course of events during the present wars. One of the latest instances of its recognition is the regret expressed, in November, 1916, in a diplomatic note from Germany to the Netherlands, on account of a cruise in October over Dutch territory, not far from Rotterdam, by a German air ship, during which she dropped two reservoirs of benzine. The Dutch Government protested against this, as a violation of Holland's neutrality. The German Government explained, in reply, that the commander thought he was flying over Belgium, and was forced to throw out the reservoirs by some trouble with the steering gear.

Norway, by a royal decree of October 13, 1916, taking effect on October 30, has closed her ports and waters to commercial submarines, unless sailing on the surface, in broad daylight, and flying their national colors. If any belonging to a belligerent power arrive in such fashion at a Norwegian port, they are not to be interned, but will be treated like ordinary merchantmen. The Netherlands, a few days later (on October 23), accorded them the like character.

The Royal Court of Justice in Leipsic has removed from office an American executor, so far as his ancillary administration in Germany is concerned. He was acting under a will affecting property both in the United States and Germany, which was admitted to probate in New York in 1908. The court gives as reasons that the repeated violations of international law at sea by the allied powers makes communication between him and the principal beneficiaries, who reside in Germany, almost impossible, and that a severance of diplomatic relations might follow the stand taken by the United States regarding submarine warfare.

It will be recollected that in close connection with the Second Pan-American Scientific Congress, held at Washington in December, 1915, and January, 1916, an American Institute of International Law was organized, made up of members from each of the American republics, appointed by an affiliated society for the advancement of international law, which was formed with that view, in each.

The Brazilian Society has taken an important step, in proposing to the Brazilian Parliament the formation of a league of neutral powers to resist encroachments on their rights by belligerents during the present wars, and to formulate a declaration of those rights. Among these are specifically included complete liberty of trade between themselves, regardless of the ultimate disposition of cargoes, and immunity from blacklisting, such as Great Britain has instituted. In case of any violation of neutral rights commercial non-intercourse is proposed.

This movement acquires new importance from the practical extension, since 1914, of belligerents' rights in controlling ocean trade, by such measures as the British regulation of trade in moneyed securities by private parties. By a Treasury order of January 30, 1917, British subjects owning foreign or colonial securities, if they sell them, must remit the proceeds to England, and if these are to be reinvested, it must be in British securities; nor can United States, Canadian, or Newfoundland securities, owned by Englishmen, be sold except in one of the countries last named.

The English courts have recently held that an English corporation, all but one of the shares of which were held by Germans, was to be considered in case of war with Germany as belonging to her, and so to be an alien enemy. *Daimler Co., Limited, vs. Continental Tyre and Rubber Co.*, 2 Appeal Cases, 1916, 307. The French courts have come substantially to the same result, under the ministerial decree of September 27, 1914, by which the execution of a contract with or creation of an obligation to subjects of the Central Powers is forbidden, and Article 911 of the Civil Code, which declares that every disposition made for the benefit of one legally incapable of receiving such a benefit shall be void, whether disguised under the form of an onerous contract, or made in the name of a third party, interposed for the purpose

(*personnes interposées*). They have, without departing from the general rule that the legal seat of a corporation determines its nationality, taken ground that in time of war, they can look into the real character of the organization, and give due weight to the membership of alien enemies. If the conditions prove such as to show that the corporate entity is being used for the benefit of enemies, and put in the place of a third party interposed for the purpose, the substance of the transaction and not its form will control. The case of the *Conserves de Lenzbourg*, Court of Cassation, July 20, 1915, was of that description.

This course conforms to a circular of the *Garde des Sceaux* of February 29, 1916. In that the following language is used:

"The apparent nationality of a corporation does not avail absolutely to control its *status*. The legal forms with which the corporation is invested, the place of its principal seat, all the indications to which private law adheres to determine the nationality of a corporation are inoperative when it is a question of fixing, from the point of view of public law, its real character. It is to be identified with the subjects of an enemy nationality when, notoriously, its direction or its funds are all or in the greater part in the hands of enemy's subjects; for in such a case, behind the fiction of private law conceals itself, alive and active, the personality of the enemy itself."

A careful review of the French decisions on these points, by M. H. E. Barrault, was published last fall in the *Revue de Droit international privé* of Paris, and has been reprinted in separate form.

The Supreme Court of Ohio has given a novel construction to Article 14 of the treaty between the United States and Sweden, which stipulates that consular officers "shall, so far as the laws of each country will permit, and pending the appointment of an administrator and until letters of administration have been granted, take charge of the property left by the deceased for the benefit of his lawful heirs and creditors, and, moreover, have the right to be appointed as administrator of such estate." It regards this privilege of custodial rights as one to be exercised only so far as may be conformable to the laws of the state, in which administration is sought, and holds that the privilege of obtaining administration is so bound up with the other as to be governed by the same rule.¹

¹ *Pagano v. Cerri*, 93 O. St., 345; 112 *Northeastern*, 1037.

Another state (Virginia), in 1916 authorized voting by mail, the elector having previously filed notice of his intention to avail himself of this permission.² The German Empire reaches somewhat the same end by allowing a citizen belonging to one of the component states to vote for representatives in the imperial diet (*Reichstag*) at any place in any of the states where he may be found at the time of the election.

The Mexican constitutional convention recently held in Queretaro frankly adopted the policy of "Mexico for the Mexicans." No unnaturalized foreigner can acquire, in the future, title to real estate. The Carranza government has informed our Minister that clear titles, previously fully vested, are not affected.

The existing constitution (of 1857) allows foreigners to acquire real estate, unless (Article 30) they manifest a resolution to preserve their nationality. The new constitution indicates a little more plainly that it is meant that holders of concessions shall not invoke their protection by foreign governments, of which they claim to be citizens.

In respect to employment by the government, native born Mexicans are given a preference over naturalized Mexicans. Under the constitution of 1857 no such distinction was made (Article 32) except in the case of the President of the Republic (Article 77), as to which the plan in the Constitution of the United States was followed.

S. E. B.

B. EDITORIAL MISCELLANY.

REPORT ON THE PLANS FOR THE INTERNATIONAL HIGH COMMISSION FOR 1917.

We are indebted to Dr. C. E. McGuire, Assistant Secretary-General, for the statement of the plans for the International High Commission for 1917 in its work of bringing about closer financial and commercial relations between the American republics.

At the meeting of the International High Commission in Buenos Aires in April, 1916, it was determined to concentrate the work of the commission in the hands of a central executive council consisting of the three executive officers of the section of the commission belonging to that country whose capital would

² American Political Science Review, XI, 17.

be selected as the headquarters of the commission. For the period ensuing until the second meeting of the commission, Washington has been designated as its headquarters, and consequently the chairman, vice-chairman and secretary of the United States Section become for that period president, vice-president and secretary-general of the commission.

Since the return of the United States delegation from Buenos Aires the council has been engaged in working out a program for the commission during the present year. It has been found desirable to concentrate the work of the commission as far as possible upon subjects which are strictly within the competence of the commission, which, as is already known, consists almost exclusively of jurists and business men. For that reason some of the technical subjects upon which the commission has been asked to express an opinion appear to require further study, and for the time being the council will not attempt to define with precision the attitude of the commission in their regard.

The subjects with which the commission can most profitably deal during the present year are believed to be the following:

I. AN INTERNATIONAL GOLD CLEARANCE FUND.

A draft convention has been submitted through the usual diplomatic channels and the governments of Central and South America regulating the operation of an international gold clearance fund and obviating the necessity of physical transfer of gold in settlement of accounts between the national banks of the countries interested and the Federal Reserve Banks of the United States.

II. REGULATIONS GOVERNING COMMERCIAL TRAVELERS AND THEIR SAMPLES.

A draft convention concerning commercial travelers has been submitted in the same manner as the convention just mentioned. This draft is based upon the fundamental principle defined at the Buenos Aires meeting of the convention, namely, the federalization or consolidation of all the municipal or provincial fees now imposed upon commercial travelers; with its corollary principle of the rapid and inexpensive despatch of commercial travelers' samples.

III. COMMERCIAL LAW: INCLUDING NEGOTIABLE INSTRUMENTS,
BILLS OF LADING, WAREHOUSE RECEIPTS, CHECKS, CON-
DITIONAL SALES AND CHATTEL MORTGAGES.

At its meeting in Buenos Aires the commission registered a distinct advance in regard to the subject of bills of exchange. Taking as its basis the uniform rules on bills of exchange, as perfected at The Hague in 1912, the commission modified and adopted these rules at the particular needs of inter-American commerce and agreed to dispense with nearly all the reservations preserved in the convention under which the uniform rules were to be adopted—exception being made only of the difficult question involved in Articles 18 and 20 of the convention and 74 of the rules. This question is one of jurisdiction, whether the nationality or the domicile of the maker of a bill shall govern the adjudication of any dispute later arising from the transaction. With the exception of this point which has been left for a second meeting of the commission to determine, The Hague rules have now been distinctively adapted to the needs of commercial communities of the American republics and are being submitted in this form to the respective governments for incorporation into their commercial codes. With regard to checks, almost identical procedure may be expected to be followed. As to bills of lading and warehouse receipts, the commission has manifested a deep interest in the uniform laws on these subjects devised by the Conference of Commissioners on Uniform Laws of the United States. The commission is now studying Spanish and Portuguese translations of these acts. Work has not yet commenced upon the subjects of conditional sales and chattel mortgages as it is desirable rather to press the matters with which the members of the commission are now more readily familiar.

IV. THE ARBITRATION OF COMMERCIAL DISPUTES.

The ready and direct settlement of commercial disputes between citizens of different nationalities appears to have found a practical and satisfactory *modus operandi* in the compact entered into between the Chamber of Commerce of Buenos Aires and the Chamber of Commerce of the United States. The commission and the Pan-American Financial Conferences have reason to be

deeply interested in this agreement and the Central Executive Council of the commission plans to encourage the conclusion of similar if not identical agreements between the Chamber of Commerce of the United States and national Chambers of Commerce in other countries of South and Central America.

V. THE TRADE-MARK, COPYRIGHT AND PATENT CONVENTIONS
OF 1910.

The commission desires to encourage the early putting into effect of the technical conventions adopted at the Fourth International Conference of American States in Buenos Aires in 1910, especially those relating to patents, trade-marks and copyrights, due to the action of the commission at its meeting in April, 1916. Costa Rica has recently ratified these conventions making the Trade-Mark Convention effective for the northern group of states as enumerated in the convention itself. It was intended to establish two International Trade-Mark Bureaus, one at Rio de Janeiro for the southern continent, and the other at Havana for the 11 states of North and Central America. Costa Rica was the eighth state in the northern group to adhere to the convention, giving the necessary two-thirds for its inauguration.

The council will also address communications to the various sections of the commission with reference to customs administrative matters. The method of arriving at a uniform system of merchandise classification, the simplification of customs regulations, and of customs documentation and the reduction and consolidation of port charges will form the subjects of special studies carried on by the council.

In addition the commission retains on its program with a view to examination in the order which seems most feasible the following subjects:

The establishment of an American postal union.

The adoption of a monetary unit of account, .900 fine and weighing .33437 gm.

The improvement of banking facilities and the extension of credit for the promotion of private and public enterprises.

The conservation and exploitation of mineral resources.

The improvement of labor conditions; the establishment of sections of the international labor association.

The intercontinental railway; means for the completion of its surveys.

American bibliographical review.

Thus, it will be seen that the council proposes to devote its attention to those subjects in the fields of fiscal regulations, public finance and commercial law, with which it regards the members of the commission as in a position to deal with effect and authority, and, which, furthermore, it feels not only require, but are capable of, international treatment. Without derogating in any way from its interest in these three groups of subjects—each of which would afford ample opportunity for an international body to accomplish a great deal—the commission may be able from time to time to assist in carrying into effect recommendations on matters not readily included under these headings. Whenever such a case may arise the commission will desire to co-operate as far as possible.

We are indebted to Henri La Fontaine, Senator of Belgium and Professor of International Law, now in our country, for the brief article on "International Law and War" (special article, *infra*, p. 165). He sends this message to our readers, upon the essentials of his position "in that vital question of the lawfulness of war," and expresses the wish—"May a great number of our colleagues, not only in this country, but abroad, realize how pressing it is for all the jurists of the world to make up their minds and to stand for the right solution."

NECROLOGY.

FRANK L. JOANNINI.

The tragic death of Frank L. Joannini in an automobile accident in Washington on February 16, 1917, deprived the Comparative Law Bureau of one of its most valued collaborators. Mr. Joannini was born in Italy, the son of Count Joannini, Italian Minister to Mexico; George Harrington, Assistant Secretary of the Treasury under President Lincoln, and United States Minister to Switzerland was his grandfather, and one of his ancestors

was Samuel Chase, signer of the Declaration of Independence. With such a heritage and education, it was natural for him to turn to the field of foreign law, and he early gained a reputation as an expert legal translator. His familiarity with the civil, and especially the Spanish-American law, was unsurpassed. His publications include the translations of the codes and laws of Cuba, Porto Rico and the Philippines, and the Civil Code and Code of Civil Procedure of Panama and the Canal Zone; issued by the government whilst he was official translator in the War Department, and of the Argentine and Peruvian Civil Codes for the Comparative Law Bureau. He left unfinished a scholarly dictionary of Spanish legal terms. He was frequently called upon by various departments for legal research and expert translation, his official work taking him to Venezuela for the asphalt investigation, to Cuba during the second intervention, and to Rio de Janeiro for the third Pan-American Conference. At the time of his death, he was connected with the Argentine Embassy. His loss is deeply regretted. There is perhaps no one in the United States who combines with knowledge and experience, the painstaking industry and generous devotion to scientific work for its own sake, necessary to carry on his labors.

P. J. E.

C. SPECIAL ARTICLES.

THE NEW CONSTITUTION OF MEXICO.

By ROBERT J. KERR, CHICAGO, ASSOCIATE EDITOR.

About January 1, 1917, there was constituted for the first time in two years a representative assembly in Mexico. During this period there were issued by the several military authorities, or by the first chief of the *de facto* government, various decrees referring to a great variety of subjects. Owing to the necessarily temporary nature of these pronouncements it is not thought advisable to review them in detail.

Nearly all of the important decrees are renewed in special provisions of the new constitution for the Republic of Mexico, which was adopted on January 31, 1917, and promulgated February 5, 1917. The official report regarding the adoption of this constitution states that it was considered article by article by a body of delegates chosen from every state and territory of Mexico, a very

small number of whom were military officials. It is claimed that this is the first document of the character which has ever been produced in Mexico by a body of representative Mexican citizens composed almost exclusively of civilians. As will be seen from the following commentary, there are embodied in it provisions representing the most recent thought along certain sociological and economic lines, which fact, so its sponsors claim, entitle it to be ranked as the most progressive and modern constitution ever adopted.

Owing to the great importance of this event, whether the present government is retained in power or whether its opponents, who are very numerous, succeed in overthrowing it and, with it, the constitution it has thus adopted, it seems desirable to present at some length the specific provisions of the new Constitution of Mexico, in effect May 1, 1917.

FIRST TITLE.

CHAPTER I. OF INDIVIDUAL GUARANTEES.

Every individual in the United States of Mexico is guaranteed the right to enjoy the protection of this constitution, being deprived of this right only in the cases and under the conditions hereby established. Slavery is prohibited. Instruction is free and without charge in primary schools. No religious corporation or minister of any cult may establish or direct schools for primary instruction. No one shall be limited or hindered in the exercise of any profession or participation in industry or commerce, the law in each state determining in what professions special licenses shall be required. No one shall be compelled to perform personal services without proper compensation. The only public services which shall be obligatory are: Service in the army, service on juries, and service in connection with the electoral machinery, the last of which shall be rendered gratuitously.

The state cannot permit any contract, pact or agreement to be carried out which has for its object the restriction, loss, or irrevocable sacrifice of the liberty of a man, whether because of labor, education or religious vows. The law, therefore, cannot permit the establishment of monastic orders whatever may be their denomination or object, nor will the law recognize any

contract in which a man renounces either temporarily or permanently the right to engage in any profession, industry or commerce. No contract of employment shall be valid for a longer period than one year (art. 5).

The expression of ideas shall not be the object of any judicial or administrative inquisition except in cases of attack on the morals or on the rights of a third party, the provocation of crime or the disturbance of the public order (art. 6).

Freedom of writing and publishing of material on any subject is inviolable. In no case can the printing machinery be sequestered as an instrument of the crime.

The right of petition is permitted and every petition must be answered by the authority to whom it is directed. The right of free meeting is guaranteed, but only citizens of the Republic may meet together to discuss national political subjects. No armed meeting shall be permitted to hold deliberations. No meeting or assembly shall be considered illegal or prevented by the authorities, even when its object is to present a petition or protest against a public official, unless harm is threatened to said official. Inhabitants of Mexico may possess arms of every kind for their security and lawful defense, with exception of such arms as are reserved for the use of the armed forces of the nation. Every man shall have the right to enter the Republic and leave it, travel through its territory and change his residence without being required to have any passport, safe conduct or other similar document. The exercise of this right is of course subordinated to the rights of the judicial power and of the administrative authorities with reference to emigration, immigration and health and subject also to the powers of the administrative authorities over pernicious foreigners resident in the country.

Titles of nobility and hereditary honors and prerogatives are neither granted nor recognized in Mexico.

No one may be judged by private laws or by special tribunals. No person or corporation can enjoy greater emoluments than those fixed by law, as compensation for public services. Military tribunals shall continue in existence for crimes and misdemeanors against a military official, but such tribunals are in no case and for no reason whatsoever, to extend their jurisdiction to persons who do not belong to the army (art. 13).

No law shall have retroactive effect in prejudice of the rights of any person. No one may be deprived of life, liberty or his properties or rights, except by judicial proceedings before tribunals previously established in connection with which all of the formalities of procedure shall be carried out in conformity with laws enacted prior to the case in question. In criminal suits the imposition of any penalty fixed by analogy or argument and not depending upon a law already in force which is exactly applicable to the crime in question is forbidden. In civil cases the final decree must conform to the letter or the juridical interpretation of the law, and in default of this shall be founded on general principles of justice (art. 14).

The celebration of treaties for extradition of political prisoners or of delinquents who are treated as slaves in the country where the crime was committed is forbidden, as also are agreements or treaties by virtue of which the guarantees and rights established by this constitution for men in general and for citizens are sought to be altered (art. 15).

No one may be molested in his person, family or home except by legally authorized written order. Only the judicial authorities may issue orders for the apprehension or detention of a person and then only upon an accusation or complaint as to a determined fact which the law punishes with corporal punishment, except in cases of "*flagrante delicto*." No one may be imprisoned for debts of a purely civil character. The services of the courts shall be gratuitous, all judicial costs being therefore prohibited (art. 17).

No one may be detained for a period exceeding three days without a formal order of commitment. In every criminal case the accused shall have the right to be immediately placed at liberty under bonds up to ten thousand pesos, unless the crime is punishable by a sentence of longer than five years in prison, nor can the accused be compelled to testify against himself. Close confinement (*incomunicacion*) is absolutely prohibited. The accused shall be granted public hearing within 48 hours after his arrest and shall be given the name of his accuser and the nature or cause of the accusation. Every accused shall be judged in a public hearing by a judge or jury of citizens who know how to read and write, residents of the place and district where the

crime was committed, providing such crime is punishable by a greater punishment than one year in prison. The accused shall be placed on trial within four months if the penalty does not exceed two years in prison and within one year if the maximum penalty exceeds that period. The accused may be heard in his own defense or may be represented by counsel, or both, as he decides. In case that he has no one to defend him, he shall be given the list of public defenders from which he may choose one or more. The counsel for the accused may be present at every step in the proceedings. In no case may the detention or imprisonment of an accused be prolonged for failure to pay fees of defenders or any other obligation (art. 20).

Fines may only be levied by judicial authority in proceedings instituted by the public attorney. Infractions of administrative and police regulations are punishable by the administrative authorities, but such punishments shall consist only of a fine or arrest of 36 hours. If the defendant does not pay the fine imposed this shall be changed to arrest, which shall in no case exceed 15 days. If the accused is a workman or laborer he cannot be punished by a greater fine than the amount of his wages or compensation for one week (art. 21).

The punishments of mutilation, marking and confiscation of property, etc., are prohibited. The death penalty is prohibited for political crimes and as to other crimes may only be imposed on a traitor to the country in a foreign war, on a parricide, or on certain homicides, incendiaries, highway men, pirates and persons guilty of grave military offenses (art. 22).

No one may be twice accused of the same crime.

Every man is free to choose whatever religious belief and to practice the ceremonies, devotions or other acts of his own cult, either in temples or in his private home. Every religious act of a public cult must be celebrated within a temple and all temples shall always be under the vigilance of the public authorities (art. 24).

Ownership of the lands and waters comprised within the limits of the national territory belongs originally to the nation, which has, and has had, the right to transmit the ownership thereof to private persons, thereby creating private ownership, which shall not be expropriated except for public use and after the payment

of an indemnity. The nation shall at all times have the right to impose on private property regulations required by the interests of the state and may regulate the use of all natural elements susceptible of appropriation in order to make an equitable distribution of public riches and in order to conserve the same. The measures necessary for the subdivision of lands may, therefore, be decreed, as well as those required for the development of small properties, the creation of new centers of farm population with the lands and waters indispensable thereto, for the development of agriculture and for preventing the destruction of natural elements and avoiding the changes which property may suffer in prejudice of the rights of society. The towns, villages and communities which have no lands or waters, or do not have them in sufficient quantities for the necessities of the population, shall have the right to take such lands and waters from adjacent properties, small properties being always respected; consequently all dotations of lands which have been made up to this date in conformity with the decree of January 6, 1915, are hereby confirmed. The acquisition of private property necessary to carry out the objects hereinbefore expressed shall be considered of public benefit.

Direct ownership of all minerals or substances which occur in veins, blankets, masses or deposits which constitute deposits whose nature is distinct from the components of the soil, such as the minerals from which are extracted metals and metaloids used in industry, belongs to the nation as well as the ownership of all deposits of precious stones, rock salt and sea salt and the products derived from the decomposition of rocks wherever their exploitation requires subterranean workings, the phosphates capable of being used as fertilizer; the solid mineral combustibles, petroleum and all of the solid, liquid and gaseous carbides of hydrogen also belong to the nation (art. 27).

The waters of the territorial seas throughout the extent and bounds fixed by international law also belong to the nation, as well as those of lagoons, marshes and of interior lakes of natural formation which are directly connected with constant currents and those of the principal rivers and creeks, especially those which serve as a boundary to the national territory or the territory of any state. The water which is taken out of mines also belongs to

the nation. Any other current of water not included in those specifically enumerated is considered an integral part of the private property which it crosses, but the use of such waters whenever they pass from one farm to another shall be considered as public property subject to the laws of the states. In the cases herein before referred to the ownership of the nation is inalienable and imprescriptible and concessions can only be issued by the federal government to private parties or civil or commercial corporations organized in conformity with the Mexican law under the condition that regular works shall be established for the exploitation of the elements covered thereby and under the further condition that all of the provisions of the laws shall be complied with.

The right to acquire the ownership of the lands and the waters belonging to the nation shall be governed by the following provisions:

I. Only Mexicans by birth and naturalization and Mexican corporations have the right to acquire ownership of lands, waters, and their accessions and to obtain concessions for the exploitation of mines, waters, or combustible minerals in the Republic of Mexico. The state may grant the same right to foreigners provided they appear and agree in the Department of Foreign Relations that they shall be considered as Mexicans with respect to said properties and agree not to invoke the protection of their own governments in anything referring to said properties, under penalty, in case of defaulting in their agreement of losing to the nation all of the property which they may have acquired by virtue thereof. Within a zone of 100 kilometers from the frontier and of 50 kilometers from the seashore, foreigners shall not be permitted for any reason whatsoever to acquire direct ownership of lands and waters.

II. The religious associations called "churches," whatever may be their creed, shall not under any circumstances have capacity to acquire, possess or administer real property, nor charges created thereon. The property which they have themselves heretofore actually bought or held through third persons, shall pass to the ownership of the nation and any person may denounce property found under such conditions. Proof of presumption shall be sufficient in order to uphold such a denouncement. All temples

destined for the use of a public cult belong to the nation represented by the federal government, which shall determine what temples shall continue in use. The bishop's residences, parish houses, seminaries, asylums or schools of religious associations, convents, and all their divisions, which may have been constructed or used for the instruction, propagation or teaching of any religious cult shall immediately pass with full rights to the direct ownership of the nation and shall be destined exclusively for the public use of the federation of the states in their respective jurisdictions. All temples which may hereafter be erected for a public cult shall be the property of the nation.

III. Charitable institutions, public or private, which have for their object giving aid to the needy, diffusion of learning, and the mutual assistance of those associated together, or any other legal object, may not acquire or administer capital secured on real property where the term on which said capital is secured exceeds 10 years. In no case shall institutions of this class be under the patronage, direct administration, charge or supervision of religious corporations or institutions, or of ministers of religious cults, or of their representatives, even when such ministers or representatives shall not actually perform their religious duties.

IV. Commercial corporations which have issued shares shall not acquire, possess, or administer rural property. Corporations of this character which may be organized to exploit any manufacturing, mining, or oil industry, or for any other object which is not farming, may acquire, possess, and administer lands solely to the amount which may be strictly necessary for the establishment or business use in connection with the objects indicated and with the approval of the executive of the union or of the states in each case.

V. Banks duly authorized in conformity with the laws as to institutions of credit may have capital secured by urban and rustic properties in accordance with the provisions of said laws, but may not own or administer more real property than absolutely necessary for their direct objects and temporarily for the short period fixed by the same laws such real property as may be adjudicated to them judicially in payment of their credits.

VI. The co-owners of ranches, towns, congregations, tribes and other corporations having inhabitants which in fact or in law

are in a communal state, shall have capacity to enjoy in common the lands, woods and waters, which belong to them, or which may be restored to them in conformity with the law of January 6, 1915.

VII. Outside of the corporations referred to in paragraphs III, IV, V and VI, no other civil corporation may act or administer for itself real property or the investments secured thereon with the sole exception of the buildings destined immediately and directly to the purposes of the institution. The states, federal district and territories, as well as the municipalities throughout the Republic, shall have due capacity to acquire and possess all real property necessary for public use.

The laws of the federation, and of the states within their respective jurisdictions shall determine the cases when private property may be occupied for public use; in accordance with said laws the administrative authorities shall make announcements of the prices which may be fixed as the indemnity for the thing expropriated, shall pass upon the sum which figures as the fiscal value thereof in the tax and collection offices, whether this value may have been set by the owner or accepted by him tacitly by his having paid his taxes on this basis, such value being increased by 10 per cent. The excess of value which the private property may have had for improvements which may have been made after the date when the fiscal value was determined shall be the only thing which shall be subject to expert judgment and judicial determination. This same rule shall be observed with reference to objects whose value is not fixed in the tax collecting offices.

All decrees, findings, resolutions, surveys, concessions, compositions, decrees, settlements, transfers, or sales, which may have totally or partially deprived of their lands, woods, and waters the co-owners of villages, towns, congregations, tribes and other corporations having inhabitants which still exist under the law of June 25, 1856, are hereby declared null and likewise all orders, resolutions and operations which may take place in the future and which may produce the same effect, are declared null. In consequence, all of the lands, woods, and waters of which the corporations referred to may have been deprived, shall be restored to them in accordance with the decree of January 6, 1915, which shall continue in effect as a constitutional law. There are

excepted from the nullity heretofore referred to only those lands, titles to which may have been issued in connection with subdivisions made in accordance with said law of June 25, 1856, or which may have been possessed in the name of the private person under the title of ownership for more than 10 years, whenever their superficial extent does not exceed 50 hectares. The excess over that extent shall be returned to the community, the owner being indemnified for its value. All of the laws of restitution which are decreed by virtue of this precept shall be immediately carried out by the administrative authorities. Only the members of the community shall have a right to the subdivision of lands and these rights shall be inalienable as to said lands as long as they remain undivided, as well as to those of private ownership whenever the subdivision may have been made.

The exercise of the rights of action belonging to the nation by virtue of the provisions in the present article shall be made effective by judicial procedure, but in the course of this procedure and by order of the proper tribunals, which order shall be issued within the maximum period of one month, the administrative authorities shall at once proceed to the occupation and public sale of the lands, woods, and waters hereinbefore referred to and of all of their accessions, and in no case can acts of said authorities be revoked before the final decree is entered.

During the next constitutional period the congress of the union and the legislatures of the states in their respective territories shall enact laws to carry out the subdivision of large holdings of property in conformity with the following provisions:

(a) In each state and territory there shall be fixed the maximum extension of lands which may be owned by one single individual or legally organized corporation.

(b) The excess over the extension thus fixed must be subdivided by the owner within the period provided by local laws and the fractions thus formed shall be placed on sale under conditions approved by the government in accordance with the same laws.

(c) If the owner refuses a subdivision, this shall be done by the local government, the land being expropriated therefor.

(d) The value of the lands shall be paid by actual payments which shall retire the principal and interest in a period of not less than 20 years, during which the purchaser shall have no right

to convey his rights. The rate of interest shall not exceed 5 per cent per annum.

(e) The owners shall be compelled to receive bonds of a special debt to guarantee the payment of the property expropriated. For this purpose the congress of the union shall enact a law authorizing the states to create their own agrarian debt.

(f) The local laws shall regulate the patrimony of families, determining the property which is to constitute such patrimony, on what basis it shall remain inalienable and providing that it shall not be subject to embargo nor to encumbrance.

All contracts and concessions made by prior government since the year 1876, which involved a monopoly of lands, waters, and natural riches of the nation by a single person or corporation, are declared reviewable, and the executive of the union is authorized to declare them null whenever they involve grave wrongs to the public interest (art. 27).

Article 28 of the old constitution prohibiting monopolies and privileges has been elaborated by the addition of a paragraph especially condemning the cornering of articles of necessary consumption for the purpose of raising prices and also condemning attempts to curb competition and combinations of all sorts in industry, commerce, transportation, etc., and, in general, condemning everything which may result in an undue, exclusive advantage in favor of one or more certain persons, or to the prejudice of the public in general, or of any special social class. Organizations of workmen formed for the protection of their own interests are especially excepted from the operations of these provisions against monopolies. Associations or co-operative companies of producers who organize to sell their products directly in foreign markets, when such associations are under the supervision of state or federal governments of Mexico, are also excepted from the rules against monopolies. This last provision seems especially to be made for the protection of the Henequen Association of Yucatan and similar organizations. This article also provides for a single bank of issue to be controlled by this government.

CHAPTER II. OF MEXICANS.

The provisions of the former constitution regarding citizenship and naturalization are amplified and modified. Children born in Mexico of foreign parents must choose their nationality within

one year after coming of age. The Indian population must declare their desire to acquire Mexican citizenship, in which case the law shall fix the conditions to be met by the Indian in order to obtain citizenship (art. 30).

The first obligation of Mexicans is to require their children under 15 years of age to attend school in order to obtain a primary, elementary and military education. Citizens themselves must attend on certain days set apart by the town authorities to receive specific military instruction. All citizens must serve in the national guard and pay taxes.

The old provision giving preference to Mexicans over foreigners in all concessions and government employment is retained and it is further provided that in time of peace no foreigner may serve in the army or on the police force. Citizenship is a requisite for service in the navy and also in order to obtain a license as captain, pilot, or chief engineer in merchant ships, these also being required to carry a crew two-thirds of which must be Mexicans.

CHAPTER III. OF FOREIGNERS.

Foreigners are those who do not possess the character of Mexicans as defined in Article 30. They are entitled to all of the guarantees given by Section 1 of the First Title of this constitution, but the executive of the union shall have exclusive authority to compel them to leave the national territory immediately and without the necessity of a judicial proceeding, whenever he thinks their presence in the country is "inconvenient." Foreigners are prohibited absolutely from mixing in the political affairs of the country (art. 33).

CHAPTER IV. OF MEXICAN CITIZENS.

Citizens are defined as all those Mexicans who meet the following requirements:

First: Having completed eighteen (18) years of age being married, or twenty-one (21) years if unmarried; and

Second: Pursuing an honest mode of life.

After stating the rights and obligations of citizenship provisions are added to the article of the former constitution providing that citizenship shall be forfeited by any one who compromises himself in any manner before a minister of any cult,

or before any other person, not to observe the present constitution or the laws enacted thereunder (art. 37).

Suspension of the rights and prerogatives of citizens is provided for, especially in cases of failure to meet the obligations of citizenship and when a citizen is subject to criminal process punishable by corporal punishment and during the continuance of his term of punishment. The rights of citizenship are also lost by fugitives from justice, habitual criminals and drunkards and by those who are especially condemned to temporary suspension from such rights (art. 38).

SECOND TITLE.

CHAPTER I. OF NATIONAL SOVEREIGNTY AND THE FORM OF GOVERNMENT.

The provisions of the old constitution are substantially re-enacted.

CHAPTER II. OF THE INTEGRAL PARTS OF THE FEDERATION AND OF THE NATIONAL TERRITORY.

A new state is created called "Nayarit," which takes the place of the former territory of Tepic.

THIRD TITLE.

CHAPTER I. OF THE DIVISION OF POWERS.

In this and succeeding chapters the three branches of government—executive, legislative and judicial—are provided for, the provisions of the former constitution being repeated with changes, some of which will be noted. No one may be elected as a deputy who is in active service in the army, nor in command in municipal or rural police; or who has held such positions within 90 days prior to the election. A new provision requires that two-thirds of the senate constitutes a quorum. Congress is required to meet on the first of September of each year.

The provisions for the initiation and formation of laws, and the general provisions regarding the powers of congress, are much elaborated, the scheme of local home rule being developed through the municipalities and states. The congress is especially given power to choose the substitute or provisional president in case of the failure of the elected president to act,

Article 73 provides that congress shall elect all the judges of the Supreme Court and these name the circuit and district federal judges, all being named for limited terms until the year 1923, after which date all the magistrates and judges shall serve for life.

Article 83 provides that the president shall enter upon a four-year term on December 1 and may not be re-elected (the third transitory article providing that the first presidential period shall commence December 1, 1916). In case of the failure of the president, through death or otherwise, during the first two years of his term congress appoints a temporary president and provides for an election to fill out the term, the office of vice-president being abolished. If the failure occurs during the final two years of the presidential term congress names a substitute president to fill out the term.

The federal courts have jurisdiction in the following cases:

I. All controversies, both civil and criminal, arising out of the enforcement or application of federal laws, or concerning treaties with foreign powers.

II. All controversies under maritime law.

III. All controversies to which the federal government is a party.

IV. All controversies between two or more states or one state and the federal government.

V. All controversies arising between a state and one or more citizens of another state.

VI. Cases involving members of the diplomatic and consular corps (art. 104).

FIFTH TITLE.

OF THE STATES OF THE FEDERATION.

The states shall adopt for their internal management the form of a republican, representative, popular government, having as a basis of their territorial division and their political organization the free municipality in accordance with the following rules:

I. Each municipality shall be governed by a council chosen by popular, direct election and there shall be no intermediate authority between such council and the government of the state. (This rule abolishes the old "*jefes politicos*.")

II. The municipalities shall freely manage their own fiscal affairs, their revenue being made up from such taxes as the legislatures of the states may authorize.

III. Municipalities shall have a juridical existence for all purposes.

The governors of the states serve four years and may not be re-elected (art. 115).

The remaining articles of this title, seven in number, define the rights, limitations and obligations of the states and of their governors.

SIXTH TITLE.

OF LABOR AND THE SOCIAL ORDER.

The federal congress and the legislatures of the states must enact laws regarding labor which must be based upon the needs of each locality, but which must not contravene the following general rules which govern the labor of all workmen, day laborers, employees, domestics and artisans and, in general, every labor contract.

I. The maximum day's labor shall be eight hours.

II. The maximum night shift shall be seven hours. Women and youths of less than 16 years are prohibited from engaging in unhealthy or dangerous occupations and from working at night and from working in commercial establishments after 10 o'clock at night.

III. Youths from 12 to 16 years shall have a maximum working day of six hours. The work of children under 12 may not be made the subject of a contract.

IV. Laboring men must have at least one day of rest for each six days of labor.

V. Women shall not do any physical work requiring any considerable material effort during three months prior to their confinement and during the month following their confinement they shall have absolute rest, receiving full pay and retaining their employment and the rights they have acquired under their contracts. During the period when they are giving milk they shall have two extra periods of rest per day, of a half hour each, in order to nurse their children.

VI. The minimum wage which a workman shall receive shall be such as may be considered sufficient to meet the normal necessities of the life of a workman, his education and his honest pleasures, considering him as the head of a family and taking into account the conditions of each district. In every farming, commercial, manufacturing or mining establishment the workmen shall be entitled to participate in the profits which participation shall be regulated as provided in paragraph IX.

VII. For an equal amount of work an equal salary must be paid without distinction of sex or nationality.

VIII. The minimum wage is exempt from levy, charge or discount.

IX. The fixing of the minimum rate of salary and the participation in the profits referred to in paragraph VI shall be done by special commissions formed in each municipality which shall be subordinate to a central board of conciliation which shall be established in each state.

X. Salaries must be paid in legal money and not in merchandise or with tickets, checks or any other token which may be substituted for money.

XI. Whenever on account of extraordinary circumstances the hours of labor are increased there shall be paid for excess time 100 per cent more than the wage fixed for normal hours, but in no case shall the excess time exceed three hours or three consecutive times. Men less than 16 years, and women of whatever age are forbidden to do this class of work.

XII. In every farming, industrial, mining or other kind of enterprise the owners are compelled to furnish to their workmen suitable and hygienic dwellings and may charge as rent therefor monthly not to exceed one-half of 1 per cent of their assessed value. Owners must also provide schools, infirmaries and other services necessary in the community. If the business is situated in a town and employs more than 100 workers it shall assume the first of the obligations above mentioned.

XIII. Furthermore, in these same centers of labor whenever the population exceeds 200, a tract of not less than 5000 square meters of land must be reserved for the establishment of public markets and the erection of buildings to be used for municipal

purposes and recreation centers. The establishment of saloons and gambling places in any labor center is absolutely prohibited.

XIV. The owners of a business are responsible for accidents to their workmen and for the diseases which they contract by reason of engaging in the special trade or labor in which they are employed. Therefore they must pay proper indemnities either for death or for temporary or permanent incapacity for work as the laws may require. This responsibility shall exist even in cases where the proprietor contracts for labor through an intermediary.

XV. The proprietor must observe the laws of health and hygiene in the building of his establishment and must adopt adequate measures to prevent accidents through the use of machines, instruments and materials and must so organize his establishment that there shall be the greatest guaranties for the health and life of the workmen that are compatible with the nature of the business.

XVI. The workmen as well as the employers shall have the right to band together in syndicates, trade associations, etc., for the protection of their respective interests.

XVII. The laws shall recognize as a right of workmen and employers both strikes and shut-downs.

XVIII. Strikes shall be lawful whenever they have for their object the securing of an equilibrium between the several factors of production, harmonizing the rights of labor and those of capital. In all public works it shall be compulsory for the workmen to give 10 days' notice to the Board of Conciliation and Arbitration of the date set for suspending work. Strikes shall be considered unlawful only when a majority of the strikers commit acts of violence against persons or property or, in case of war, when the strikers are in establishments and services on which the government is depending. Workmen in the military manufacturing establishments of the government of the Republic are not included in the provisions of this paragraph.

XIX. Lock-outs or shut-downs shall be only when an excess of production requires a suspension of work in order to maintain prices within cost limits and then only with the approval of the Board of Conciliation and Arbitration.

XX. Differences and conflicts between capital and labor shall be subject to the decision of a Board of Conciliation and Arbitration formed by equal numbers of workmen and employers and one government representative.

XXI. If an employer refuses to submit differences to arbitration or to accept the finding of the board, the contract of employment will be considered terminated and the employer must pay an indemnity equivalent to three months wages in addition to whatever other obligations may have been imposed on him by the dispute. If the refusal is by the workmen then the contract is terminated.

XXII. The employer who discharges a workmen without just cause, or for having joined an association or union or for having taken part in a lawful strike shall be compelled, at the option of the employee, to fulfill his contract or to indemnify him to the amount of three months wages. He shall have the same obligation whenever the employee resigns for lack of probity of the employer or because he has suffered bad treatment at the hands of the employer, either as to his own person or that of his wife, parents, children, brothers or sisters. The employer cannot escape this responsibility when the bad treatment is the act of employees or members of his family who act with the consent or tolerance of the employer.

XXIII. Credits in favor of workman for salary or wages accruing during the last year and for indemnities shall have preference over all other credits in cases of insolvency or bankruptcy.

XXIV. Only the workman himself shall be responsible to the employer for debts contracted in favor of the latter by the associates, members of the family or dependents of the workman and in no case and for no reason whatsoever shall these debts be collected from the members of the workman's family nor shall such debts be demandable for an amount exceeding one month's salary of the workman.

XXV. Services performed in securing employment for workmen shall be gratuitous as far as he is concerned whether performed by municipal officers, labor boards or any other official or private institution.

XXVI. Every contract of labor celebrated between a Mexican and a foreign employer must be legalized by the competent municipal authority and visé by the consul of the nation to which the Mexican is to go it being understood that, in addition to the ordinary clauses the contract must specify clearly that the employer must pay the expense of sending the employee back to his own country.

XXVII. The following conditions are null and shall not bind the contracting parties even when stated in the contract:

(a) Stipulations for a day's labor that is inhuman because notoriously excessive because of the character of the work.

(b) Stipulations for a salary which is not remunerative in the judgment of the Board of Conciliation and Arbitration.

(c) Stipulations for a period longer than one week for the payment of wages.

(d) Stipulations which fix as the place for the payment of wages a place of recreation, restaurant, cafe, tavern, saloon or store unless the services were performed in such establishment.

(e) Stipulations which imply a direct or indirect obligation to purchase in certain stores or places articles for the use of the employee.

(f) Stipulations which permit a salary to be retained on account of fines.

(g) Stipulations which amount to a renouncement by the employee of the indemnities to which he is entitled for accidents, trade diseases, injuries suffered or for his dismissal from work.

(h) All other stipulations which imply a renouncement of any right secured to the employee by the laws for the benefit and protection of workmen.

XXVIII. The laws shall determine what property shall constitute the patrimony of a family and such property shall not be transferable or subject to encumbrance or attachment and shall descend under title of heirship with a simplification of the formalities of probate proceedings.

XXIX. The following shall be considered social utilities: The establishment of popular insurance funds for life, involuntary cessation of work, accidents and other analogous purposes, therefore the federal government as well as the government of each state shall encourage the organization of institutions of this class

in order to inculcate and encourage popular savings and self-protection.

XXX. Likewise co-operative societies for the construction of cheap and hygienic houses destined to be acquired in ownership by workmen in a definite term shall be considered as public utilities (art. 123).

SEVENTH TITLE.

GENERAL PROVISIONS.

The powers not expressly given by this constitution to federal authorities are understood as reserved to the states (art. 124).

It is a part of the functions of the federal power to intervene in matters of religious cults and external discipline in the manner provided by law. Congress cannot pass laws establishing or prohibiting any religion. The law does not recognize the religious groups called churches as having any personality whatsoever. The ministers of the several cults shall be considered as persons engaged in a profession and shall be directly subject to the laws that may be enacted on this subject. The legislatures of the states shall merely have power to determine the maximum number of ministers of cults in accordance with local needs.

In order to exercise in Mexico the profession of minister of a cult it is necessary to be a Mexican by birth. Ministers of the cult may never either in public or private meetings or in the observances or religious propaganda of a cult, criticize the basic laws of the country, certain particular officials or the government in general nor shall they have a vote, active or passive or any right to associate together for political purposes.

In order to dedicate to a cult new places to be opened to the public, permission of the department of government will be required, the state government first making its recommendations.

Every temple of a cult must have a person designated as in charge thereof who must report his appointment, such report being concurred in by 10 neighbors. Every change must be similarly reported.

Studies pursued in institutions founded to give professional instruction to ministers of cults cannot be recognized or credited in official schools. Religious publications are forbidden to publish news of acts of public authority or of private persons with respect to public institutions and may not comment on political subjects.

The formation of a political group with a name which contains any work or indication that it is related to any religious cult is prohibited. Political meetings may not be held in churches.

No minister of any cult may inherit or take directly or indirectly any real property occupied by an association for the propagation of religion or for religious or charitable purposes and ministers of any cult are absolutely prohibited from taking any property by will from other ministers of the same cult or from any person with whom they are not related within the fourth degree (art. 130).

EIGHTH TITLE.

OF AMENDMENTS TO THE CONSTITUTION.

Two-thirds vote of congress and the approval of the legislatures of a majority of the states are the requisites established in order to amend the constitution (art. 135).

NINTH TITLE.

OF THE INVIOABILITY OF THE CONSTITUTION.

This constitution shall not lose its force even when its observance is interrupted by rebellion. In the event that, through a public disaster, a government opposed to the principles herein sanctioned, is established, as soon as the people recover their liberty the observance of this constitution shall be re-established (art. 136).

TRANSITORY ARTICLES.

The constitution becomes effective at once as to all provisions relative to the election of federal and state officials and in all other respects it goes into operation May 1, 1917. The present first chief shall call elections immediately. Congress shall elect the members of the Supreme Court in May, 1917, so that the court may be organized June 1, 1917. The congress shall meet in special session April 15, 1917, to oversee the election of president. The electoral law for this election will be issued by the first chief.

(The full text of this constitution in English will be published in the next number of the *Mexican Review*, Riggs Building, Washington, D. C. The editor is indebted to that journal for the Spanish print from which the foregoing extracts were made.)

ADVERSE POSSESSION—PRESCRIPTION.

II.

In the first part of this article published in the 1916 April number, we gave a skeleton sketch of the history and later development of the institution treated of, in various of the countries of Continental Europe.

We saw that the two conceptions of the institution, the Roman and the Germanic, still persist, and that they have influenced each other. Still, it was made apparent, that while in Latin countries the institution as it appears today has practically reverted to the pure Roman type, in the Germanic countries the Latin type either never gained ascendancy except in some externals, or else the Germanic type has reasserted itself and rules today.

When we cross the Channel, we find another condition of affairs. In England and—through England—partly in America, neither type can be said to be dominant; a peculiar mixture has taken place. Until within 100 years, the English type of adverse possession was in certain respects even more Germanic than that of Germany; and on the other hand, purely Roman influences had shaped the law in other respects according to the Roman pattern.

For this reason alone, our subject is well worth comparative study. But another circumstance makes it even more so, and by reason thereof it may be said to be eminently fitted for bringing out the fundamental difference between continental and English-American law, the difference between a substantive and an adjective system of law.

The final results caused by this difference are not so very great, although not insignificant; the difference shows itself primarily in the way and manner in which the results are reached.

Even in France, where the same name is used for the acquisition of a right by user, and for the loss of a right by non-user, it is well understood that, in the first case, the emphasis, the foundation of the right, is an active exercise of power, while in the second case the emphasis, the cause of the prescription, lies in a passive non-exercise of power. If A have a claim against B, all that is required in order to make the prescription run, is that neither A nor B shall do anything for a certain length of time;

if both remain passive during this space of time, A's claim against B becomes extinguished. But if A owns a thing of which he does not have the possession, B cannot acquire title thereto by simply doing nothing for the time limited. While the passivity of A is necessary, a certain activity, a certain exercise of power on the part of B is equally necessary: he must acquire the possession of A's property and, having obtained it, he must maintain and defend his possession against the rest of the world.

The reason for the difference is that, in the first case, the question is about a *jus in personam*, while in the other, it is about a *jus in rem*. Not considering derivative acquisitions through gift or *mortis causa*, no man can acquire title to a thing by mere passivity. All things are subject to dominium, and it is by the exercise of dominium only that title can be acquired to a thing, whether *tertii* or *nullius*.

For this reason prescription of claims is founded upon the ground that, if a man does not think more of his claim than to allow it to grow stale, he shall not have the state's aid to enforce it; the prescription is in the nature of a penalty for his indifference; there must be an end to litigation. But acquisitive prescription is founded upon the economic conception that all things should be used according to their nature and purpose. The man so using a thing, and using and preserving it for a certain length of time, has done a work beneficial to the community. He deserves well of the state, and his reward is the conferring upon him of the title to the thing used.

When the question is of losing a claim by prescription, the theory on both sides of the Channel is that the claimant by his neglect has lost his "right of action." But when we speak of acquisitive prescription, the continental theory pays no attention to the former owner's loss of this right; this loss is a mere incident—the possessor does not become the owner because the former owner has lost his right of action, but because he, himself, has exercised an owner's dominium for the time fixed by law. And the former owner has lost his right of action, because another man has become the owner.

Another difference which has had, and still has some influence in differentiating the English and Continental systems, is the different conceptions of the word title. Under English law, title,

titulus, is almost considered as in the nature of a quality of the thing, as something you can register and thereby make like one of its appurtenances; the right and the evidence thereof have to some extent been merged into the one conception of title—while on the continent, if the word is used at all, title, *titulus*, means nothing outside of the evidence, or chain of evidence, whereby the right in a thing, whatever it may be, is established.

This difference is not of great practical importance today, as far as our subject is concerned, but up to the English Real Property Act of 1833, it was actually possible in England for one man to have the title, and still for another to be the owner.

The general doctrine is that the law of the Continent is practically Roman law, while the law of England is national law. The former uses probably more Roman nomenclature than does that of England, and in many single institutions shows a nearer kinship to the law of Rome. Still, it may perhaps be asserted that the general spirit of the law of England is more akin to that of the pre-Justinian Roman law, than is that of continental law to Justinian law. Generally speaking, the law of Rome was a law of remedies, and the same may be said, with even greater emphasis, of the law of England, while fundamentally the law of the Continent is a law of substantive rights, to which the remedies attach themselves as a matter of course.

Both on the Continent and in England two systems of "prescription" met the Roman one and the Germanic one. As stated in the first part of this article, the Germanic institution had influenced later Roman law, hence the institution of *prescriptio longissimi temporis*. But after the fall of the West Roman empire, Roman law influenced and altered the Germanic law of the conquerors. In all of the Latin countries, Italy, Spain, Portugal and Southern France (later in Northern France also) the genuine Roman *prescriptio* was adopted, with its requirements of *bona fides* and *justus titulus*, and to this day this form of prescription is part of their law. In the countries remaining Germanic (Germany and Scandinavia) notwithstanding the reception of *jus civile* by the old German empire, *prescriptio longi temporis* was never introduced, but the Justinian law was so far accepted that its institution known as *prescriptio longissimi temporis* was allowed to take the place of the old rule about the

memory of man running not to the contrary, and this form gradually became exclusive and superseded the old forms of *usucapio* (Lavhaevd, etc.).

England in many ways formed an exception to the other European countries. It had been under Roman rule for about 400 years, but it had never become Romanized in anything like the same degree as Gaul; still Roman influences, both old and new, continued to make themselves felt, especially after the introduction of Christianity. Not 200 years after this event, commenced the assaults of the Vilings, which led to the setting up of many temporary Danish and Norwegian duodez kingdoms, to the division of the land into two law districts, and, finally, to a total, if short-lived, submission to Danish rule. When we consider that law in those days was a matter of nationality and not of territory, and that each insignificant tribe had its own system of law, we easily discern that there was no strong homogenous national English system of law to set up against the conqueror, when at last it became England's turn to be conquered by a people having the power and the purpose to make themselves masters.

As the Germanic North settled down to civilized conditions, a hitherto unknown demand for cash money was felt. The old ways of barter were insufficient, and the cutting off and weighing of a piece of a ring or armlet was a too cumbersome process. The kings commenced to coin money. But they paid money out, only, and did not receive any; practically all dues to the king were paid *in natura*, and in disposing of the tax-goods collected, the king most often had to take other goods, or services in return. There was one way of getting at least some coin as a clear profit, viz., by debasing the coin. All of the kings tried it, and in time found out that it made them poorer instead of richer.

There was one form of revenue, however, which always had been, and continued to be paid in coin, or at least in metal, to wit: The king's share in the proceeds of litigation.

When, during the 11th, 12th and 13th centuries, we see the king's judicial powers expand everywhere, the sole reason was not the general breaking down of the old popular institutions; but the deliberate design of the kings to gather in the greatest possible share of the judicial revenues, was a very active and effective cause, also.

During these centuries, before the Italian bankers had firmly established themselves in the North, the crying need for cash is felt by every Germanic king.

But in making the law pay, the continental monarch had a harder task than their English cousin. Their conquests were hundreds of years old, and they were bound and tied down by old established laws, rules and privileges. Their conquests had been made at the head of a host of free men who became allodial owners. It was a hard task for the continental kings to persuade their subjects to purchase law from them instead of obtaining it in the old popular courts; the transition to feudal conditions was difficult, slow, and never became complete.

But the King of England was a recent conqueror, and he was a feudal conqueror, having made his conquest as the feudal lord of an army of vassals and their villains. In theory, all there was in England belonged to him. After the new dispensation had been firmly established, the Plantagenet kings did with English justice as they pleased. And it pleased them to make it as great a producer of revenue as possible.

This was principally accomplished by the multiplication of writs. A scale of prices became established, and as the writs were so minutely differentiated, it became easy and of daily occurrence to make mistakes as to the kind of writ which was required, with the resultant necessity of taking out successively several writs, all to the great advantage of the king's exchequer. The result of this way of dispensing justice was necessarily that the attention was focussed almost exclusively on the remedy; a man might feel that he had a right, the law might say so also; but until he had gotten the clerks of the king's chancellor to devise a special form of writ under which he could sue, it did not do him the least good to have the right, for there was no general form of writ to be used in all cases not expressly excepted. The whole of the law of England became a law about remedies, and our law is so inculcated with the same spirit that it is almost impossible to eradicate it. The Civil Code of California provides that there shall be only one form of action, one form of summons, etc., but when the writer practised law in San Francisco some 25 years ago, after the code had been in force for 20 years, or more, we had all the same kinds of actions as in any other part of the United States;

the differentiations had simply been moved from the writ to the complaint, and the same old game went on rejoicing and in full vigor. The question continued to be: Not whether claimant had a substantive right, but whether he had a right of action.

However, this is straying from our subject, but the excursion has been deemed necessary in order to explain, what, how and why the English-American system of prescription is.

It is likely that in England, both under Saxon and Danish law, there existed institutions similar to Roman *usucapio* or Danish *Lávhaevd*. But even so, these institutions do not appear to have had any influence in the shaping of the legal effects of adverse possession as we find them during the 12th century, and later.

The rule seems to have been purely Germanic. In order to claim ownership the claimant must have exercised dominium for so long a time that the memory of man runneth not to the contrary.

This rule was established at a time when no written record was made of court proceedings, when none of the people attending court could read or write, and when no histories were written. At that time, the rule meant that no living man, and especially no man living in the particular district and attending the particular court, could remember a condition of affairs different from the one existing. Nobody had any paper deed; what evidence there might have been of a man's grant was all contained within the witnesses thereto, and these might all be dead, or have disappeared. So that the title in all such cases, even when in fact it did rest on a grant, must in law be founded on the long continued seisin, and be considered as simply possessory.

But writing did appear, and did affect the question of title by adverse possession in a double way. First, as to the question of time. Suppose the claimant produced a written grant; even if no living man could remember a different situation, here was evidence that such different situation had sometime existed; in other words, the memory of at least one man as to a different state of facts had been crystallized and formed a perpetual record thereof. But, if the principle of a written grant as a refutation of "the memory of no man to the contrary" be admitted, then the logical conclusion was that any old written grant, even from

the time of Adam, would be sufficient to prevent an acquisition of title by adverse possession. It became necessary to fix an arbitrary limit beyond which the memory of man was not supposed to run. In fixing such limitation, English law did not follow Justinian and make it run for a fixed number of years, the same in all cases, but it fixed a certain day and year beyond which man's memory to the contrary was of no avail, and this date was the same in all cases without regard to the different periods seisin had existed in the individual cases. First it was some time during the reign of Henry I, then from time to time, various dates during the reign of Henry II, until the date finally became fixed as the day of the ascension to the throne of Richard I, Coeur de Lion. This date remained the limitation back for centuries after any living man could possibly remember King Richard, or his ascension, or anything which took place or existed in the year 1189.

On the other hand, most people by this time having written grants (*bok*) of their land, the conception became imbedded in men's mind that a grant must necessarily be in writing. When the proof of adverse possession for a long time was allowed to establish title, it must be because the original written grant had been lost; but a written grant there must have been.

By admitting both of these conceptions at the same time, although they contradict each other, the English law on adverse possession fell into a most unsatisfactory and curious condition.

The statute 32 Henry VIII, c. 2 (and 21 Jac., c. 16) was passed in order to obtain a fixed period of limitation for each individual case, and undoubtedly was of great importance in this respect, but still it remained the law, that if it could be positively shown that the claim originally arose subsequent to the first year of Richard I, then the claimant's showing of 60 years seisin in him and his ancestors or predecessors was of no avail, and his title failed. In other words this statute was simply a statute of limitation upon the assertion of prescriptive claims it prevented the approval of claims of title which had arisen before the time of legal memory, but which had not been asserted and enjoyed for the period of more than the last 60 years.

For from two to three hundred years the law remained unchanged and fell into a wonderful condition of uncertainty and complexity. Those who desire to obtain a fuller understanding

of conditions prior to the prescription and real property acts, we refer to Chapter I of Mr. Herbert's book on the history of the law of the prescription in England. It is there shown how it became necessary in every case of adverse possession for the jury to find as a fact that there had existed a now lost grant, even when the judge, the claimant, the defendant, the jury, and everybody else concerned knew perfectly well, that as a matter of fact no such grant ever did exist. By reading the cases there cited, one's first impression must be that one is reading a satire on the law, the courts, the judges and the lawyers in one of Moliere's or Holberg's comedies. But seeing that the cases were tried, and the opinions written by the judges of the courts and of the House of Lords of England, one realizes that the proceedings were actual and in dead earnest, and that the situation as described was produced, not by the daring imagination of a satirical scribe, but by the peculiar principle of English law, that like a dog one must always go back to the same old bone and each time gnaw it down a little finer, until there is nothing left but the hard knuckle which must be allowed to rot before it can be handled.

The impossible situations caused by the state of the law of adverse possessions had, however, been greatly mitigated by the system of so-called "fines." There had been a great vacillation in the effect given to fines levied. Originally they represented settlements of suits actually brought, but soon fictitious suits were devised, and the courts gave equal effect to such. It was necessary, however, that the levying of a fine should have publicity, and in order to secure this the statute 18 Ed. I, stat. 4, *de modo levandi fines*, was passed, generally regulating the mode of levying fines and requiring that they should be publicly read. By the statute of non-claim 34 Ed. III, c. 16, fines were deprived of most of their effect as a means of quieting titles, as they were declared to have no operative force against anybody but the parties to them. But fines were reintroduced by 1 Ric. III, c. 7, and 4 Hen. VII, c. 24, under which the period of limitation was five years, and proclamations were made essential. It was necessary, however, that the person levying the fine had an estate of freehold in the land, but it was immaterial whether this estate was of right or not.

The statute of 21 Jac. I, c. 16, deals with actions of ejectment and formedon only, and made the limitation 20 years in each case.

So that, from this time on, recovery of land might be barred either under the statutes of limitation (32 Hen. VIII, c. 2, and 21 Jac. I, c. 16) which affected the remedy only, or under the statute of fines, 4 Hen. VII, c. 24, which both barred the remedy and extinguished the interest.

Outside of all of these statutes was, however, the question of the effect of adverse possession under an equitable title which gave rise, among many others, to the famous case of *Cholmondeley vs. Clinton* (1817, 2 Mer. 171; 1820, 2 Jac. & W. 152; 1821, 4 Bligle, 119, etc.). We do not have space to go into a discussion of this case or of the questions involved, but refer the readers to the printed reports and to John M. Lightwood on the "Possession of land," p. 167, etc.

The questions of adverse possession and of prescription, as far as land in England is concerned, have now been settled in the main by the Real Property Limitation Act of July 23, 1833 (3 & 4 Will. 4, c. 27) as amended by the Real Property Limitation Act of August 7, 1874 (37 & 38 Vict., c. 57). See also 3 & 4 Will. 4, c. 42 and 1 Vict., c. 28.

Under these acts the general limitation is 12 years. As the names indicate, these acts are limitation acts and reach their object by taking away the remedy. But in fact, they become and are adverse possession acts, as they not only destroy the plaintiff's remedy, but establish a new possessory title in the seisor. And it is not necessary that the person in possession shall have made a technical disseisin of the true owner; he who enters in possession, gains thereby a right of possession, whether he is strictly a disseisor or not. This possessory title is, while the statute runs, valid against all the world except the actual owner, and after the statute has run it is indefeasible by anybody. The new owner protected under the statute, does not rest his right upon the loss of remedy by somebody else; he rests it upon his own uninterrupted possession, and as far as the former owner is concerned the effect of the running of the statute is simply that it deprives him of the right to interrupt the actual dominium upon which the person in possession founds his title. The title of the new owner is not founded upon any *successio inter vivos* to an existing right. His acquisition of title is primary, and when the statute has run in his favor, he is to be considered as holding title as *primus occupans*.

AXEL TEISEN.

THE RIGHT OF THE ADOPTED CHILD IN INTESTATE
SUCCESSION.

By ARTHUR R. THOMPSON, WASHINGTON, D. C.

A recent decision by the Supreme Court of Spain sets at rest an apparent conflict in the provisions of the Civil Code relative to hereditary rights of adopted children, and this decision furnishes the subject of a most interesting article by Professor José Castán, of the faculty of law in the University of Madrid, appearing in the General Review of Legislation and Jurisprudence (Spanish).

The article here contributed is largely a translation of that of Professor Castán.

The following articles of the Civil Code of Spain are applicable to the question presented:

"Art. 176. The adopter and the adopted owe each other mutual support. This obligation is understood without prejudice to the preferred right of acknowledged natural children and of the ascendants of the adopter to be supported by the latter."

"Art. 177. The adopter does not acquire any right whatsoever to inherit from the adopted. Neither does the adopted acquire any right to inherit from the adopter, except by will, unless the adopter in the deed of adoption has bound himself or herself to make said child his or her heir. This obligation shall produce no effect when the adopted dies before the adopter. The adopted retains all the rights belonging to him or her in his or her natural family, excepting those relating to the parental authority."

"Art. 667. The act by which a person disposes of all his property or a part of it, to take effect after his death, is called a will."

"Art. 668. The testator may dispose of his property either under title of inheritance or under that of legacy."

"Art. 912. Legitimate succession takes place."

"Sec. 2. When the will does not contain the designation of heirship to all or part of the property, or does not dispose of all that belongs to the testator. In such case legitimate succession shall take place only with regard to the property of which the testator has not disposed."

The general provisions of the Code relative to intestate succession, while they do provide for legitimate descendants, ascendants, acknowledged natural children, collaterals, and finally succession by the state, yet adopted children are not included.

Adoption is a juridical institution, known perhaps by all the advanced peoples of the earth, and in ancient times was so closely related to hereditary succession that it constituted one of the forms, if not to say the only one possible, of the right to testate. In the Constitution of the Family, says Gide y Caillemer: "Adoption was a remedy afforded by the religion and laws of one who had no natural heir, for the purpose of perpetuating his descendancy and to secure the continuance of domestic cult and the transmission of his property. The law not permitting that a person could have other than legitimate heirs, no one could be given a successor without the introduction of same by adoption in his family." In this manner, adoption according to the ancient law created in the adopted a legitimate and necessary heir.

In Rome the conservation of sacred family rights, the penalties imposed upon sterile marriages, and the aspiration to parental authority contributed to the frequent use of adoption as a juridical institution.

In the time of Justinian, adoption had already taken on a new phase, and when made by the ascendants of the adopted was termed *adoptio plena*, creating the parental authority and conferring on the adopted a right to inherit, which could not be revoked by a testament of the adopter, unless, of course, there existed some legitimate reason for disinheritance; and it further gave the right to the adopter of succession to property of the adopted. But normal adoption—*minus plena*—did not give the adopter parental authority nor family rights to the adopted; only in the event that the adopting parent die intestate did it confer on the adopted the right to inherit; the adopter acquired no right to succession, but the child remained in the family and succession of its natural parents.

This institution based on the continuance of the family partnership and whose benefits were principally in favor of the adopter came to be an institution almost exclusively in favor of the adopted, that is, it was molded after the *adoptio minus plena* of Justinian and appears in this rôle in modern law.

In synthesis, the modern Codes had either rejected adoption as was done in Portugal, Holland, Switzerland, Norway, Argentina and Chile, or they accepted adoption with all its provisions

favorable to the adopted, not only recognizing him as did the law of Justinian as to rights of succession intestate, but he was considered in the same class as a legitimate child.

Costa is of the opinion that adoption existed in Spain prior to the time of the Roman Conquest, and that its traditions continued during the Middle Ages according to many cases in the history of the laws of the province of Aragón. This law has the character of originality as to adoption, and demonstrates that it is not a copy of the Roman Law for it provides: "Any man under whatever conditions, and although he may have legitimate children, may create as one of them an adopted child," and it was the common opinion among all publicists that even women had the same right. As to the adopted child, "it is obliged after the death of the parents, in the same manner as the legitimate children, to pay off all the debts of the deceased and enters into the circle of legitimate children," which is equivalent to a clear recognition of the right of succession either testate or intestate.

In the other provinces of Spain, adoption was not continued in the full force that it was in Aragón, judging from the silence maintained in their written laws, but even supposing that this rigorous observation was lost or detracted from during some of the centuries of the Middle Ages, yet it reappears in the thirteenth century due to the renaissance of the Roman Law in Spain, and is accorded special regulations with such Law as a basis, in the *Royal Acts*, *Partidas*, Code of Customs, the Laws of Valencia, etc. In all of these are recognized the rights of the adopted child.

The jurist-consults of the Kingdom of Spain, in imitation of those of France, had viewed the law of adoption with deep prejudice. It was looked upon as a child of the pernicious influence of the Roman Law, and as an institution completely ignored by the Germanic peoples. The fact that the legislation of Aragón was the most genuinely national of the peninsula and was expressed in such terms as to credit it with being the source of the law of adoption, made no difference. The publicists even laid such stress upon the peculiarity of such a law as to allege that Aragón in this particular had copied from the Roman Law. "The law of adoption is as inconsistent with the spirit of the civil legislation of Aragón as would be a Roman façade on a

Gothic cathedral," was stated in the Congress of jurist-consults in Aragón.

Under such conditions it is not extraordinary that in the preparation of the Civil Code of 1851 of Spain, the suppression of adoption was considered, but that it was not so suppressed is due to the fact that a delegate from Andalucía was present and stated that in his province there had been some cases of this kind under consideration, and because of the law being permissive instead of imperative that unjust restrictions had been imposed, such as the adopted child being refused the right of succession intestate to the adopter.

The Civil Code of 1889 introduces some beneficial reforms, such as the unification of the various classes or kinds of adoption permitted by the ancient law and a complete assimilation of the adoption by a man with that of adoption by a woman.

But in contrast with these progressive reforms the present Code contravenes the spirit of evolution. Adoption has come to be an institution not centered in the adopted child, but in the adopting parent, as it concedes to the latter parental authority and even the administration and usufruct of the adopted child's property, upon giving bond. The right to use the name and the rights of succession are only accorded to the adopted child when it is so stipulated. Here the adoption is given a purely contractual character as opposed to the institution or law of the Family which has always obtained, and alters the Spanish principle of tradition which prohibits succession by contract.

Having discussed somewhat the historic evolution of the law of adoption, we will now consider the question presented and which was disposed of by the Supreme Court of Spain, with its interpretation of the laws applicable thereto:

WHAT RIGHTS CAN BE INVOKED IN INTESTATE SUCCESSION BY AN ADOPTED CHILD WHOM THE ADOPTER HAS AGREED TO MAKE HIS HEIR UNDER THE TERMS OF THE DEED OF ADOPTION, ACCORDING TO ARTICLE 177 OF THE CIVIL CODE?

Many of the Spanish commentators have not addressed themselves to the difficulties presented by this question. Navarro Amandi ingenuously says: "The principal effect of adoption is to subject the adopted minor to the parental authority of the

adopter. Any other effects of adoption scarcely merit the trouble of explanation." But among those who have considered this problem, Comas seems to be of the opinion that no right whatever to inherit could be based upon the Deed of Adoption; Sanchez Román and Scaevola concede the right to succession intestate of the adopted, but only in the event that the adopter agreed to make him an heir, and died without descendants, ascendants, or natural children either recognized or legitimized by Royal concession.

With this difference of opinion the case referred to was presented to the courts of Spain. The third clause of the Deed of Adoption reads thus:

"Each one of the adopting parents, because of their great love and affection for the child mentioned, bind and obligate themselves to make it an heir in their testament to that legal portion which the law accords to legitimate children and under such restrictions as the same may impose as to the validity and efficacy of this settlement."

The adopting parents died intestate, leaving neither legitimate descendants nor ascendants, whereupon the adopted child presented her claim as sole heir to the inheritance.

The question as will be seen was decided differently by each of the three courts:

First. *Juzgado*: All right to inherit is denied in consequence of the referred to clause. (Deed of Adoption.)

Second. *Audiencia*: That the adopted child has the right of succession in the inheritance of its adopted parent, but only to that legal portion which was stipulated in the third clause of the Deed of Adoption.

Third. *Tribunal Suprema*: That the said child, in the concept of an heir *abintestato* is entitled to the entire inheritance.

Two questions are here presented in the interpretation of the provisions of the code:

(a) Is a right to inherit derived from the Deed of Adoption?

(b) If so, is this right limited to the quota stipulated in such Deed, or can the right be extended to the entire inheritance?

The first question appears to be answered in art. 177, and the only objection to it is found in the fact that such right is not accorded to adopted children in the general provisions of the code under the title of "Intestate Succession." But as to this

apparent anomaly of the Code there prevails the axiom, *specialia generalibus derogant*. Further, intestate succession is not a hard and fast rule, but is a series of independent rights whose individualism and separation may be absolute.

The second question is more doubtful. The appellant attributed to the decision of the trial (Juzgado) court the following infractions of the law:

First. That of art. 177 of the code which does not add that the obligation contracted by the adopting parent must be governed by the terms in which it is expressed in the Deed of Adoption.

Second. That of paragraph 2 of art. 912 of the code, as well as arts. 667 and 668 of the same; whenever the court gives to the Deed of Adoption the character of a testamentary disposition, and consecrates the existence of the succession at once testate and intestate in an inheritance which does not fulfill the requisites of paragraph 2, art. 912, in order that both methods of succession might subsist jointly.

The key to this problem is found in art. 177 of the Code. Does such article give to the promise to create an heir (Deed of Adoption) the character and effect of a disposition of property to take place at death, or does it only create a conditional right in the intestate succession? The latter contention is based on the following reasons:

1. Because to the simple promise to create such heir (Deed of Adoption), cannot be given the consideration and effect of a perfected testament, because of the all-prevailing solemnity which attaches to the execution of a will.

2. Because, neither can you give to such promise the character of a succession by contract or agreement, for the reason that a *pacto sucesorio* violates the spirit of the Spanish laws.

Subjective rights generally have their origin in a declaration of intention (or juridical act) protected by the law. It is therefore necessary to interpret not only the intention of the legislator, but also that of the author or maker of the declaration.

The controversy as to what rights can be invoked under the Deed of Adoption is not entirely disposed of by the Supreme Court.

In the arguments on appeal, it was pointed out that "the legal portion which the law concedes to the legitimate children" (clause 3, Deed of Adoption) indicates the natural desire of the adopting parents that the adopted child should at all events, should parents die intestate, take with the legitimate children, as this would be more reasonable than the hypothesis that the natural children, or ascendants, if any, should be preferred in the inheritance.

Further, this "third clause" does not have in contemplation intestate succession but testamentary acts. The adopting parents did not intend to limit the intestate inheritance, but rather their right to dispose of their property by testament, obligating themselves to create an heir in the adopted child, although only for that legal portion which the laws conceded to legitimate children, and reserving to themselves the right to dispose of the rest of their property in favor of strangers. The quota expressed (in the Deed of Adoption) is therefore a minimum which could naturally be increased by testamentary act, but which, however, has no application to the hypothesis of an intestate succession.

As to the omission of the adopted child from those who take under the general laws of intestate succession as set forth in the Civil Code, the Supreme Court reasoned as follows: "To exclude from the intestate inheritance the petitioner, would in the event that there existed no preferred descendants, ascendants, legitimate or recognized natural children not only place at naught the juridical conception of adoption, but it would also be an absolute deviation from the rules laid down in the general law of succession which would be contrary to the moral and public order of the country, the object of such law being to perpetuate the family lineage." Further, "Adopted persons (even without the promise to make them heirs) *should* have a place in the order of succession adequate to their special condition."

COMMENT.

Although this interpretation of the law by the Supreme Court is to be commended for its spirit and tendency, and while deciding that the promise in the Deed of Adoption to create an heir in the adopted gives such adopted the right of succession intestate, their being no descendants or ascendants, it still leaves some

doubt as to the full interpretation of art. 177, as will appear by the following:

1. Has the adopted an equal right with descendants, ascendants or recognized natural children? Scaevola and Sanchez Roman deny such right, finding support in art. 176 of the Code, in reference to the preferred right to support which is conceded to ascendants and recognized natural children. They distinguish between the duty to *support* and that of *succession* in the following manner: The first being a form of assistance, which is strictly founded on the right of livelihood enjoyed by the one supported, and on the duty to fulfil this obligation on the part of the person bound to him by the ties of blood. The second is a necessary condition or factor in the patrimony, created because of personal desire as well as for the good of society and the economic welfare. For this reason, they contend, we cannot apply the maxim "*ubi est eadem ratio ibi eadem despositio juris esse debet*," and not being able to apply by analogy any legal precept, the solution becomes arbitrary and contrary to the ideals of modern jurisprudence which protect the freedom of thought and action against the invasions of prohibitive law.

2. Can the promise or agreement in the Deed of Adoption to make the adopted child an heir be revoked by a subsequent act? This gives rise to the following three hypotheses:

(a) The adopting parent far from complying with this promise may die testate and leaving as his heir a stranger. (b) The adopting parent, after having fulfilled the contract obligation by creating the adopted as his heir, revokes this act by a subsequent will in which latter he makes a stranger such heir. (c) The adopted child by an act subsequent to the adoption renounces its hereditary right.

As to the first, Scaevola is of the opinion that the adopted child has no right to ask for the nullification of its hereditary right, on the ground that this only can be done as to a duly executed will from the benefits of which the petitioner has been unjustly omitted, having a right to participate in the inheritance to the extent of that legal portion which the law accords him, saving the exceptions to said rule or law. And further, even admitting that the promise to create such heir in the adopted is a *quasi* designation, nevertheless being a testamentary act this is revocable.

As to this reasoning of Scaevola, it should be noted that even if the testamentary act is *revocable*, yet the Deed of Adoption does not possess the juridical character of a testamentary act, but rather of acts *inter vivos* as expressed by the Supreme Court in its opinion in the following words: "A bi-lateral agreement entered into between the adopter and the adopted." Of what use would an obligation or promise of this kind be if the maker could revoke it at any time?

The Supreme Court taking as the basis of its opinion the necessity of perpetuating the adopting family gives a broader interpretation to art. 177 than has heretofore been accorded it by the commentators, thus deciding in favor of the personal rights or prerogatives of the adopted, many of the problems which surround this question.

It might be commented further that if adoption carries with it the duty to support and maintain the adopted, why should it not also impose the duty to recognize the adopted as an heir. The right of succession between the adopted and the adopter, says Comas, is a consequence of the duty to support, and it should be manifested not only in the succession intestate, but he (adopted) should also enjoy the *legal portion* of the inheritance.

If adoption is divested of its true object, it immediately becomes an illogical and useless institution, because the typical and essential purpose is to produce an hereditary right, and, as stated by Planiol, with this right the heir is given all the rights of a legitimate child by those persons who have no descendants.

Professor José Castán expresses the hope that such problems as still surround the hereditary rights of an adopted child will be considered in the next revision of the Civil Code.

It might be interesting to compare with the law of adoption in Spain that of the United States where it is governed by the State statute.

The adopting parent is the same as if he were the natural parent, but has no right to recover damages resulting in the adopted child's death under a statute giving such right to the "surviving parent," or where the statute fails to give the adoptive parent any right to inherit the estate of the child. But a recovery of damages on behalf of the adopted child for the

death of the adoptive parent has been sustained without question in at least one instance.

While the primary object of the adoption statute is to allow any person to adopt the child of another and to make it capable of inheriting his estate if he should die intestate, such a statute should be given a liberal intendment and operation and should not be restricted to that object. It has been held to be within the legislative power to provide that adoptive parents shall inherit from their adopted child such property with its profits and accumulations as the child may have taken through them, or the proceeds thereof.

The adopted child is, in the legal sense, the child of both its natural and its adopting parents, and is not because of the adoption deprived of its right of inheritance from its natural parents unless the statute expressly so provides.

In considering the extraterritorial effect of adoption two rules to some extent conflicting have been brought to bear upon the question; one is that if by the law of a place where an adoption is effected the legal relation of parent and child is thereby created then that relation will be recognized as existing in every other jurisdiction in which the status and right flowing therefrom are not inconsistent with or opposed to its laws and policies. On the other hand, it is generally true that the descent of real property is governed by the laws of the state or country in which it is situated, and therefore he who claims it by inheritance must establish his claims under those laws and in the mode provided thereby or must fail.

The statutes authorizing adoption proceedings commonly give the adopted child the status of a natural child of the adoptive parent, and provide that it shall be capable of inheriting the property of such parent in the same manner as a natural child. Under such statutes it necessarily follows that the child will inherit such property on the death of the parent intestate. The right of an adopted child to inherit from its adopting parent is not affected by the circumstance that the statute of descents does not refer to adopted children. That statute must be understood as merely laying down general rules of inheritance, and not as completely and accurately defining how the status is to be created which gives the capacity to inherit; it does not undertake to

prescribe what is necessary to constitute the legal relation of parent and child.

It is well established that an adoption or even a contract to adopt, embodying a provision that the child shall inherit the property of the adoptive parent on his death, does not preclude the parent from the perfectly free and unrestrained enjoyment of his property, including the right to dispose of it in his lifetime as a gift, or at his death by will, providing only that any such transfer of the property shall be made in good faith and for some legal purpose and not for the purpose of defrauding the adopted child.

The right of an adopted child to succeed to an estate limited to the "children," "issue," or "heirs of the body," of the adoptive parent, is in some jurisdictions expressly negated by statute, and even if no statute so provides, it is generally held that an adopted child is not entitled on the death of the adoptive parent to take bequests so limited.

These statutory provisions vary according to the State in which they are enacted, but as appears from the above there is uniformity on many of the vital features in the law of adoption.

THE WEBB BILL AND THE ANTITRUST LAWS.

By GILBERT H. MONTAGUE, OF THE NEW YORK BAR.

For years American exporters to foreign markets have had to meet combinations of foreign rivals united to resist American competition, and combinations of foreign buyers united to depress the prices of American products. Even before the European War, this condition had begun to attract attention¹ and had led to a provision in the Federal Trade Commission Act² directing the newly created commission "to investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign

¹ See, for instance, addresses delivered at the Annual Convention of the Chamber of Commerce of the United States, Washington, D. C., February, 1914, and the National Foreign Trade Convention, Washington, D. C., May, 1914.

² Public Statutes No. 203, 63d Congress, approved September 26, 1914, section 6 subdivision h.

trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable." But the enormous expansion of our export trade, brought about by the European War, and the manifest dependence of our present prosperity upon the continuance of our export trade, and the certainty that with peace our export trade and our prosperity must necessarily collapse unless the disadvantages to which our exporters were subjected before the European War be promptly removed, have all focused the attention of the administration, of Congress, and of the business community in general upon the need for immediate relief, and the availability of the so-called Webb Bill^{*} for this purpose.

Having passed the House of Representatives, September 2, 1916, by a vote of 199 to 25, and being favorably reported with amendments, February 15, 1917, by the Senate Interstate Commerce Committee, the Webb Bill failed to come up for final action in the Senate only because of the congestion of other business in the closing days of the session. Backed, however, by favorable reports from the House Committee on Judiciary,⁴ and the Senate Interstate Commerce Committee,⁵ and by the specific endorsement of President Wilson in his annual address to Congress, December 5, 1916, and the support of the Secretary of Commerce,⁶ and the emphatic recommendations of the Federal Trade Commission expressed in a report of nearly a thousand pages upon the competitive conditions affecting Americans in export trade;⁷ and supported outside Congress and the administration by the Chamber of Commerce of the United States⁸ and by com-

^{*} 64th Congress, 1st Session, H. R. 17,350.

⁴ 64th Congress, 1st Session, House of Representatives, Report No. 1118 to accompany H. R. 17,350, August 15, 1916.

⁵ 64th Congress, 2d Session, Senate Report No. 1056 to accompany H. R. 17,350, dated February 15, 1917.

⁶ See 64th Congress, 1st Session, House of Representatives, Report No. 1118 to accompany H. R. 17,350, August 15, 1916.

⁷ Report on Co-operation in American Export Trade, Parts I and II, Federal Trade Commission, June 30, 1916.

⁸ Hearings before the Committee on Judiciary, House of Representatives, 64th Congress, 1st Session, on H. R. 16,707, July 18 and 20, 1916, pp. 38-39, 62-65, and Hearings before the Committee on Interstate Commerce, United States Senate, 64th Congress, 2d Session, on H. R. 17,350 pp. 138-143.

mercial organizations and business men in every section of the country,* it can hardly be doubted that the Webb Bill will be re-introduced in the session of Congress called for April 2, 1917, and will then be pressed for final action.

This is not the place to pass in review the overwhelming array of economic arguments advanced by these official and unofficial authorities which conclusively demonstrate the necessity for giving to American exporters a freer hand in foreign markets in order that they may meet by co-operative methods the combinations of foreign competitors and foreign buyers that there confront them. In this article will briefly be considered only the provisions of the Webb Bill, the reasons for these provisions, their meaning and effect particularly with respect to the existing anti-trust laws, the degree of relief which the bill may be expected to afford, and in general the availability of the bill for the purposes for which it is urged.

The Webb Bill, as reported August 15, 1916, by the House Judiciary Committee to the House of Representatives, provided that nothing in the Sherman Antitrust Act "shall be construed as declaring to be illegal an association entered into for the sole purpose of engaging in export trade and actually engaged solely in such trade, or an agreement made or act done in the course of export trade by such association, provided such agreement or act is not in restraint of trade within the United States."¹⁰ "Association," as here used, was defined as "any corporation or combination, by contract or otherwise, of two or more persons, partnerships, or corporations."¹¹ By further providing that "export trade" shall mean "solely trade or commerce in goods, wares, or merchandise exported or in the course of being exported from the United States or any territory thereof to any foreign nation; but . . . shall not be deemed to include the

* See particularly the statements submitted by representatives of the American Manufacturers' Export Association, the National Foreign Trade Council, the Chamber of Commerce of the United States, the Merchants' Association of New York, the Associated Business Papers, the Chamber of Commerce of the State of New York, the Illinois Manufacturers' Association and numerous other commercial organizations which are reported in the Hearings above mentioned.

¹⁰ Sec. 2.

¹¹ Sec. 1.

production or manufacture within the United States or any territory thereof of such goods, wares, or merchandise or any act in the course of such production or manufacture,"²² the operation of the bill was carefully limited to transactions that were solely in the course of export trade. Any transactions that in any wise were in the course of production, manufacture, or trade within the United States were effectually excluded from the benefits of the bill. Any concern desiring to enter the American export trade might, therefore, obtain the benefits of the bill, either by incorporating singly a subsidiary corporation for the sole purpose of carrying on export trade, or by joining with other concerns and taking stock or membership in an incorporated or unincorporated "association" organized for the sole purpose of carrying on export trade. To facilitate the ownership by corporations of stock or capital of any such incorporated or unincorporated "association," it was further provided that Sec. 7 of the Clayton Act restricting intercorporate stock ownership under certain conditions shall have no application to the acquisition or ownership by any corporation of stock in any such "associations" unless the effect of such acquisition or ownership may be to restrain trade or substantially lessen competition within the United States.²³ Every such "association" was required forthwith to file with the Federal Trade Commission a statement of its place of business, the names and addresses of its officers, stockholders, or members, and copies of its certificate of incorporation or articles of association, as the case may be, and a statement of "all contracts, agreements, and understandings had with any foreign or domestic association in regard to the conduct of or practices in foreign trade."²⁴ The procedure for

²² Sec. 3. A curious misreading of this section has caused some misapprehension lest the Webb Bill permit an incorporated "association" by stock ownership to monopolize steamship and transportation lines and mercantile and manufacturing concerns and similar establishments. Nothing could be further from the fact. While this section permits a corporation to hold stock in an incorporated "association"—as corporations must do, in order to co-operate effectively in export trade—it nevertheless continues every restriction of the Clayton Act against an incorporated "association" holding stock in other kinds of corporations, and thus leaves wholly intact every existing prohibition against monopolization of the kind apprehended.

²³ Sec. 4.

the prevention of "unfair methods of competition" now contained in the Federal Trade Commission Act was extended to "unfair methods of competition used in export trade against competitors engaged in export trade even though the acts constituting such unfair methods are done without the territorial jurisdiction of the United States."¹⁴ This absolutely insured fair treatment to every concern in the American export trade with which the "association" competes; and it will be observed, by referring to the definition of "export trade" above set forth, that by limiting the protection to concerns in "export trade" complaints under this section could be lodged only by concerns that were exporting from the United States to a foreign country.

Unfortunately, however, Secs. 1 and 2 above quoted were amended in the course of passage through the House of Representatives by inserting in Sec. 1, before the words "within the United States" above quoted, the words "trading in, or marketing," and by inserting in Sec. 2, after the words "within the United States" above quoted, the words "and does not restrain the export trade of the United States." That these amendments would "entirely nullify" the purpose of the bill was stated by the Federal Trade Commission:

"In order to permit," said the commission,¹⁵ "co-operation only with respect to export trade, the term 'export trade' was originally carefully defined to exclude the production or manufacture of goods within the United States, but the amendment made it also exclude 'trading in or marketing' such goods within the United States. . . . Obviously, a successful co-operative export organization would, in most cases, be obliged to purchase goods in the United States and therefore to trade in them. . . . But the amendment added a further proviso, namely, 'and does not restrain the export trade of the United States.' . . . The commission is of the opinion that these provisions of the bill would not change the present law. But the very purpose of the bill was to clarify the law, while this amendment presents the same question of construction as the existing law. The law, therefore, would be neither changed nor clarified if the bill were enacted in the form in which it was passed by the House. Therefore the business man who is deterred from engaging in co-operative action in export trade by fear or doubt concerning anti-trust laws would be left in exactly the same position as before."

¹⁴ Sec. 5.

¹⁵ Annual Report of Federal Trade Commission, November 15, 1916, pp. 35-36.

In the hearings before the Senate Interstate Commerce Committee upon the Webb Bill, the suggestions above quoted were emphasized, and also the undesirability of requiring each "association" to file a statement of "all contracts, agreements and understandings had with any foreign or domestic association in regard to the conduct of or practices in foreign trade"; and it was urged that in place of the latter provision language adapted from Sec. 6, subdivision b, of the Federal Trade Commission Act be substituted, viz., "such other information as the Federal Trade Commission may require of the association making such statement as to its organization, business, conduct, practices, management, and relation to other foreign or domestic association."

All these suggestions were accepted by the Senate Interstate Commerce Committee and embodied in the Webb Bill as favorably reported by the committee to the Senate, February 15, 1917.

In the hearings before the House Judiciary Committee upon the bill²⁸ and in the debate in the House during the passage of the bill,²⁹ and in the hearings before the Senate Interstate Commerce Committee upon the bill,³⁰ two objections insistently obtruded: First, that in spite of its provisions against restraint of trade within the United States, the bill might somehow tend to enhance prices within the United States; and second, that in spite of its provisions forbidding unfair methods of competition, whether committed within or without the territorial jurisdiction of the United States, the bill might somehow permit restraint of export trade to the prejudice of American exporters. These objections were both met by abundant economic data and argument.³¹

²⁸ Hearings before the Committee on Judiciary, House of Representatives, 64th Congress, 1st Session, on H. R. 16,707, July 18. and 20, 1916, pp. 5-14, 18-22, 44, 48-50, 80.

²⁹ Congressional Record, Vol. 63, pp. 15, 805-15, 813, 15,979-16,014, August 31 and September 2, 1916.

³⁰ Hearings before the Committee on Interstate Commerce, United States Senate, 64th Congress, 2d Session on H. R. 17,350, January 5 and 6, 1917, pp. 16-21, 47-48, 56, 116-118.

³¹ "The objections which are urged with the greatest force against liberty for co-operation in export business are that the resulting combinations will exploit consumers in the home market and oppress their American competitors in the export trade. These are serious dangers and they must be considered frankly and guarded against effectually. The commission believes that the advantages to be

Nevertheless, these objections appear to have lingered in the minds of members in both branches of Congress, and in the House led to the unfortunate amendments to Secs. 1 and 2 above described, and in the Senate induced the conviction—among some members, at least, of the Senate Interstate Commerce Committee—that some specific provision against both objections was needed. Senator Pomerene proposed to provide against these objections by making Sec. 2 read:

“That nothing contained in the act entitled ‘An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies,’ approved July second, eighteen hundred and ninety, shall be construed as declaring to be illegal an association entered into for the sole purpose of engaging in export trade and actually engaged solely in such export trade, or an agreement made or

gained by effective co-operation in foreign markets need not entail any sacrifice of the firmly established policy of this country in regard to the maintenance of fair competitive conditions, and the prohibition of monopolistic control within the United States. At the same time, co-operation for export trade will enable the exporting manufacturer to realize an increased return for his products along with decreased costs through larger scale production, and the country will enjoy greater industrial stability resulting from a broader market.

“The safeguard to the interests of the domestic consumer against any artificial stifling of domestic competition through combinations or unfair practices lies in the enforcement of the present antitrust laws, such as the Sherman Act and the Clayton Act, and of the Federal Trade Commission Act. To allow American firms to co-operate for export and to permit the use of certain methods abroad which are legal in foreign countries but are not permitted in the United States in no way implies that such co-operating firms will be allowed, through their activities in export trade, to bring about results in this country which could not otherwise be legally secured. This is the case whether the results take the form of prices artificially fixed through combination or agreement, or the form of employing against American competitors any practices which, under American law, would be held to be unfair. In other words, it is no part of the proposal of the Commission to suffer export combinations to be used as a blind to cover attempts to restrain trade at home. The legislation must be framed so that any such attempt shall remain subject to the full rigors of the antitrust laws.

“The question may be raised as to the effect of export combinations on prices in this country. Prices to the domestic consumers are always likely to be affected where changes occur in the volume

act done in the course of export trade by such association, provided such association, agreement, or act is not in restraint of trade within the United States, and is not in restraint of the export trade of any domestic competitor of such association: *And provided further*, That such association does not, either in the United States or elsewhere, enter into any agreement, understanding, or conspiracy, or do any act which artificially or intentionally and unduly enhances prices within the United States of commodities of the class exported by such association."

And at the end of Sec. 5, Senator Pomerene proposed to add these paragraphs:

"Whenever the Federal Trade Commission shall have reason to believe that an association or any agreement made or act done by such association is in restraint of trade within the United States or in restraint of the export trade of any domestic com-

of export trade, whether such changes are due to the efforts of an export combination or to other causes. For some products, particularly among manufactured articles, there may be some lowering of the domestic price. With the broader market, larger-scale manufacture will be possible. The resulting economies may lower the cost of production per unit, and with competition in the domestic market the natural tendency under such conditions of lower cost would be to lower prices to the domestic consumer.

"On the other hand, prices to the domestic consumer may, in some instances, be raised through an increase of exports brought about by encouraging producers to seek a broader market for American products. The rise may be either temporary or permanent, according to the particular circumstances under which the commodity is produced but in either instance it will be the result simply of increased exports. The domestic price for certain manufactured goods might be temporarily raised, but be followed by an increase of productive capacity, which would augment the supply and bring down the price. Should, however, the commodity be a raw material of the kind that increases in cost per unit as the quantity is increased, or a manufactured article in which such raw materials are the principal factors of cost, then there is likely to be not only a temporary but also a permanent rise in both the domestic and export prices. This would happen regardless of whether the increased exports were due to export combinations or to other causes.

"When competitive forces are given free play price adjustments of this character have been the rule in the past and will continue to be in the future. They are a consequence of the broadening of a local market for a commodity into a national and eventually into a world market. An increase in facilities for developing the export trade will merely accelerate the period of transition in the same

petitor of such association, or that an association either in the United States or elsewhere has entered into any agreement, understanding, or conspiracy, or done any act which artificially or intentionally and unduly enhances prices within the United States of commodities of the class exported by such association, it shall summon such association, its officers, and agents to appear before it, and thereafter conduct an investigation into the alleged violations of law. Upon investigation, if it shall conclude that the law has been violated, it may make to such association recommendations for the readjustment of its business, in order that it may thereafter maintain its organization and management and conduct its business in accordance with law. If such association fail to comply with the recommendations of the Federal Trade Commission, said commission shall refer its findings and recommendations to the attorney-general of the United States for such action thereon as he may deem proper. For the purpose of

general manner as would result from an increase in facilities of transportation in any region of supply by furnishing a link between demand and supply, and thereby giving the supply an increased value.

"The foregoing discussion relates solely to commodities in which the prices are fixed by competition. Any increase in the domestic price due to actions in restraint of trade to which American firms might be parties, including any accomplished through participation in so-called international agreements between themselves and foreign firms, can and must be dealt with, as already stated, under the provisions of the antitrust laws.

"One of the most common statements made about export trade—that of other countries as well as that of the United States—is to the effect that large producers or combinations of producers frequently sell cheaper to their foreign than to their home customers. In any consideration of tariff problems, this is an important matter; but so far as it concerns export combinations, only one fact need be pointed out. Probably the most prominent example of a country which has followed the policy of pushing its foreign trade by making export prices lower than its home prices is Germany. But Germany freely permits combinations in its home market. This facilitates the exaction of high prices in its domestic market, which is one of the principal conditions enabling such combinations to sell at very low prices in export trade. The fact that the law of this country prohibits such combinations in the home market not only safeguards against artificially maintained prices at home, but also gives substantial economic guaranties that American export prices will not, in general, be lower than American domestic prices. Where the domestic prices are kept on a competitive basis there is little margin left to enable the exporter to sell goods abroad at lower prices. This desirable and necessary prohibition of combinations in the domestic

enforcing these provisions the Federal Trade Commission shall have all the powers, so far as applicable, given it in 'An Act to Create a Federal Trade Commission, to Define its Powers and Duties, and for Other purposes.'"

With these amendments proposed by Senator Pomerene, and with the other changes above noted, the Webb Bill was favorably reported by the Senate Interstate Commerce Committee to the Senate, February 15, 1917.

Passing over the arguments for and against the validity of the objections that inspired Senator Pomerene's amendments, and

trade of the United States, however, would undoubtedly have the effect of considerably diminishing the efficacy of export combinations among American exporters when obliged to compete with foreign combinations which are permitted to operate in their home markets as well as abroad. One of the chief advantages to be gained from combinations among American exporters is that they will thereby be put in a position generally to secure higher profits through increased selling efficiency and in some cases to get higher prices abroad through better bargaining power.

"The fear has been expressed by some that co-operative export organization might be used to the disadvantage of non-member American firms engaged in export trade. In so far as the export organization secures its business through greater economies in introducing and selling goods in foreign markets, and from better facilities for transportation, and for handling credits, it is clearly entitled to such business, whether it gets it at the expense of some foreign rival, or of an American competitor. So long as unfair methods are not employed any loss of trade suffered by a non-member American firm must be because it cannot do the business as cheaply as the combination. If, however, the advantage of the export combination over its American rival should be obtained through the use of methods which would be considered unfair practices in the United States, the situation would be entirely different. It is important that the law under which export combinations are permitted should make clear that such actions on the part of one American exporter against another are prohibited, whether the actions take place in the United States or abroad."

(Report on Co-operation in American Export Trade, Federal Trade Commission, June 30, 1916, pp. 376-378. To the same effect see also Hearings before the Committee on the Judiciary, House of Representatives, 64th Congress, 1st Session on H. R. 16,707, July 18 and 20, 1916 pp. 18-22, 48-49, 80; and Hearings before the Committee on Interstate Commerce, United States Senate, 64th Congress, 2d Session, on H. R. 17,350, January 5 and 6, 1917, pp. 16-21, 47-48, 56, 116-118.

coming directly to the meaning and effect of the Webb Bill as favorably reported by the Senate Interstate Commerce Committee, February 15, 1917: the bill lays down, as a definite rule of construction of the antitrust laws, that they shall not be construed to forbid certain kinds of agreements and acts, on condition, however, first, that such agreements and acts are made or done only by certain specially identified and constituted organizations, and second, that such agreements and acts avoid certain specifically described results. To insure the effectiveness of these conditions, the bill vests various broad and specific powers in the Federal Trade Commission and the attorney-general.

Only certain specially identified and constituted organizations may invoke the rule of construction which the Webb Bill lays down for the antitrust laws. These, of course, are the "associations" provided for in the bill. No one can possibly avail of the bill without first disclosing his intention so to do and his identity to the Federal Trade Commission, because nobody nor anything, except an "association" which has filed with the Federal Trade Commission a full statement of its membership and business, may avail of the bill in any manner whatsoever. The purpose of this is obviously to identify and ear-mark everyone who, by any possibility, may seek to enjoy any of the benefits of the bill, and to subject him to very special supervision by the Federal Trade Commission and the attorney-general. Nor is this all. By carefully limiting the operation of the bill to such "associations" only as are "entered into for the sole purpose of engaging in export trade and actually engaged solely in such export trade," and by further defining "export trade" as "solely trade or commerce in goods, wares or merchandise, exported, or in the course of being exported from the United States or any territory thereof to any foreign nation" and excluding therefrom "the production, manufacture, or selling for consumption within the United States or any territory thereof of such goods, wares or merchandise, or any act in the course of such production or manufacture," the operation of the bill is finally whittled down to certain identified and specially constituted organizations of narrowly defined scope, whose personnel and purposes shall at all times be fully known to the Federal Trade Commission. Every

opportunity, therefore, for unobserved utilization of the benefits of the bill is thus completely precluded; and the fullest assurance is afforded that no infractions of the conditions attached to these benefits shall escape notice.

The purposes of the Webb Bill, be it always remembered, are to fix, as it were, geographical bounds to the antitrust laws; to insure that within the territorial jurisdiction of the United States the antitrust laws shall continue in undiminished force; and to make it plain, that outside the territorial jurisdiction of the United States the antitrust laws shall not be construed to forbid voluntary combinations of American exporters which do not oppress or threaten other American exporters. This implies, as any student of the antitrust laws will recognize, not only the fullest operation of the antitrust laws within the United States, but also the full operation of one or more of the antitrust laws outside the United States against such restraints of trade as would result if American exporters or combinations of American exporters should oppress or threaten other American exporters and force them involuntarily to cease from competing—involuntary restraints, as they may be called—and no operation whatsoever of any of the antitrust laws against such technical restraints of trade outside the United States as result when American exporters voluntarily combine and cease to compete with one another—voluntary restraints, as they may be called.

By limiting the operation of the Webb Bill wholly to "associations" that are "entered into for the sole purpose of engaging in export trade and actually engaged solely in such export trade," and defining "export trade" as "solely trade or commerce in goods, wares or merchandise exported, or in the course of being exported from the United States or any territory thereof to any foreign nation," and specifically excluding "the production, manufacture, or selling for consumption within the United States or any territory thereof of such goods, wares, or merchandise, or any act in the course of such production or manufacture" the antitrust laws are obviously continued in undiminished force within the territorial jurisdiction of the United States, and the first purpose of the Webb Bill is thus accomplished. The provisions already mentioned for the enforcement of the bill abundantly strengthen this assurance. By excluding from the benefits

of the bill all agreements and acts, even of "associations," unless they avoid certain specially described results, further assurances in this regard are also furnished. By providing that no agreements or acts, even of such "associations," shall come within the benefits of the bill unless "such association, agreement, or act is not in restraint of trade within the United States" and unless "such association does not, either in the United States or elsewhere, enter into any agreement, understanding, or conspiracy, or do any act which artificially or intentionally and unduly enhances prices within the United States of commodities of the class exported by such association," assurance is made doubly sure that within the territorial jurisdiction of the United States the antitrust laws shall continue in undiminished force. The provision last quoted, of course, goes further, and attempts to meet the objection that the bill might otherwise tend somehow to enhance prices within the United States. That this objection has any validity may well be doubted; "but if it has any validity whatever, the provision last quoted amply meets it, so that not only are the antitrust laws within the United States continued in undiminished force, but the enhancement of prices within the United States through the improper operation of any "association" is effectually prevented.

The other purposes of the Webb Bill: namely, to make it plain that outside the United States the antitrust laws shall not operate against voluntary restraints which, as above defined, are simply those technical restraints of trade arising when American exporters voluntarily combine and cease to compete with one another, and to insure that outside the United States one or more of the antitrust laws of the United States shall fully operate against involuntary restraints—to use the phrase above defined—have been attempted in two provisions of the bill; the first, in the provision that nothing in the Sherman Act shall be construed as declaring unlawful an "association" of the limited character above described "entered into for the sole purpose of engaging in export trade and actually engaged solely in such export trade, or an agreement made or act done in the course of export trade by such association, provided such association, agreement, or

²² See report on Co-operation in American Export Trade hereinbefore quoted.

act is not in restraint of trade within the United States, and is not in restraint of the export trade of any domestic competitor of such association"; and the second, in the last clause of the provision just quoted, and in the extension of the prohibition in the Federal Trade Commission Act against "unfair methods of competition," "to unfair methods of competition used in export trade against competitors engaged in export trade, even though the acts constituting such unfair methods are done without the territorial jurisdiction of the United States" and in the remedies for enforcing such prohibition. Whether these provisions have successfully accomplished these purposes is a point upon which opinions differ. The provision first quoted, while it prevents every kind of involuntary restraint, may possibly prevent also some innocent and even desirable kinds of voluntary restraint."

This result, it has been suggested, might be avoided by changing the clause so as to limit the benefits of the bill to such associations, agreements and acts as do not, by "unfair methods of competition," restrain the export trade of any domestic competitor of such "association." This imports the same definition as that which the second provision just mentioned couples with an additional means of enforcement. That this definition would not molest those innocent and desirable voluntary restraints of trade which arise when American exporters voluntarily combine and cease to compete with one another, and which it is the purpose of the bill to permit, but yet would effectually prevent those involuntary restraints which would result if "associations" or even individual American exporters should oppress or threaten

"An "association" and an independent American exporter, for example, are in competition with each other. The "association" desires to take in the independent, and the independent desires to come into the "association." Under all the analogies afforded by decided cases respecting domestic combinations, however, such a union would constitute a "restraint of the export trade" of a "domestic competitor of such association," regardless of whether the total volume of trade were increased or diminished. *Addyston Pipe & Steel Company vs. U. S.* 175 U. S. 211; *U. S. vs. Trans-Missouri Freight Association* 166 U. S. 290; *U. S. vs. Joint Traffic Association*, 171 U. S. 505; *Northern Securities Co. vs. U. S.* 193 U. S. 197. Here is an innocent and desirable kind of voluntary restraint in export trade which the provisions of the Webb Bill above mentioned would seem not to permit.

other American exporters and force them involuntarily to cease from competing, would appear from various decisions in which "unfair competition" or "unfair methods of competition" or "unfair" practices have been mentioned,²¹ and various other decisions in which "fair competition" has been mentioned,²² and a decree in which "unfair competition" has been enjoined,²³ and a decree in which "fair competition" has been mentioned,²⁴ and various decrees in which neither "unfair" nor "fair" competition has been mentioned, but certain specified methods of competition has been particularly enjoined.²⁵ Somewhat the same view has been elsewhere expressed.²⁶

²¹ *Standard Oil Co. vs. United States*, 221 U. S. 1, 43; 1911. *State vs. Central Lumber Co.* 123 N. W. (S. D.) 504, 509, affirmed *Central Lumber Co. vs. South Dakota*, 226 U. S. 158; 1913. *United States vs. American Naval Stores Co.*, 172 Fed. 455, 459; 1909. *Ware-Kramer Tobacco Co. vs. American Tobacco Co.*, 180 Fed. 160; 1910. *United States vs. Patterson*, 205 Fed. 292, 301; 1913; reversed 222 Fed. 599; 1915. Beside these might be cited the cases of *United States vs. American Tobacco Co.*, 221 U. S. 106, 179; 1911. *Buckeye Powder Co. vs. E. I. du Pont de Nemours Powder Co.*, D. C. N. J. Feb. 25, 1914, Judge Rellstab's charge to the jury, not reported, affirmed in 223 Fed. 881; 1915. *United States vs. Keystone Watch Case Co.*, 218 Fed. 502, 515; 1915.

²² *In re Greene*, 52 Fed. 104; 1892. *Ware-Kramer Tobacco Co. vs. American Tobacco Co.*, 180 Fed. 160; 1910. *State vs. Fairmont Creamery Co.*, 153 Iowa 702, 709-710; 1912. Beside these might be cited the case of *Buckeye Powder Co. vs. E. I. du Pont de Nemours Powder Co.*, *supra*.

²³ *United States vs. Central West Publishing Co.*, D. C. N. D. Ill., August 3, 1912.

²⁴ *United States vs. General Electric Co.*, N. D. Ohio, October 12, 1911.

²⁵ *United States vs. Aluminum Co. of America*, D. C. W. D. Pa., June 7, 1912; *United States vs. American Coal Products Co.* D. C. S. D. N. Y., March 4, 1913. Beside these might be cited the decrees in *United States vs. Nome Retail Grocers' Association*, D. C. Alaska, November 5, 1905; *United States vs. National Association of Retail Druggists*, C. C. Ind. May 9, 1907; *United States vs. Southern Wholesale Grocers' Association*, C. C. N. D. Alabama, October 17, 1911; *United States vs. Standard Sanitary Manufacturing Co.*, C. C. Md., November 25, 1911; *United States vs. Standard Wood Co.*, C. C. S. D. N. Y., March 11, 1912; *United States vs. Pacific Coast Plumbing Supply Association*, C. C. S. D. Cal., January 6, 1912; *United States vs. Philadelphia Jobbing Confectioners' Association*, E. D. Pa., February 17, 1913; *United*

Two most effective means of insuring observance of all the conditions attached to the Webb Bill were contained in the bill as favorably reported by the Senate Interstate Commerce Committee, February 15, 1917. These were, first, the provision which was in the bill as it passed the House, September 2, 1916, by which the

States vs. Burroughs Adding Machine Co., D. C. Mich., March 3, 1913; *United States New Departure Manufacturing Co.*, D. C. W. D. N. Y. May 27, 1913; *United States vs. Elgin Board of Trade*, D. C. N. D. Ill., April 27, 1914; *United States vs. National Wholesale Jewellers' Association*, D. C. S. D. N. Y. June 30, 1914; *United States vs. Eastern States Lumber Dealers' Association*, C. C. S. D. N. Y., March 1, 1913, affirmed 234 U. S. 600; 1914. *United States vs. Hamburg-Amerikanische Packetfahrt Actien Gessellschaft*, and others, D. C. S. D. N. Y., October 13, 1914, 216 Fed. 971; 1914, but reversed because now moot in consequence of the European War, 239 U. S. 466; 1916.

²¹ "The Sherman law forbids both voluntary restraints of trade, as where persons engaged in commerce combine together for the purpose of mutually and voluntarily suppressing competition among themselves, and involuntary restraints of trade, as where persons conspire together to compel action by others, to impede or burden by unfair competitive practices the common liberty to engage in commerce, or to compel persons not in the combination involuntarily not to engage in the course of trade except on conditions that the combination imposes. (*U. S. vs. Patten*, 226 U. S. 525, 541; *Loewe vs. Lawlor*, 208 U. S. 274, 293-294; *Standard Oil Co. vs. U. S.* 221 U. S. 1, 59.) Familiar examples of voluntary restraints of trade are the *Addyston Pipe & Steel Co. vs. United States* (175 U. S. 211) and the railroad cases, especially the *Northern Securities Company vs. United States* (193 U. S. 197). In the *Standard Oil Co.* case (221 U. S. 1) both voluntary and involuntary restraints of trade were condemned. Some of the latter which were mentioned are (pp. 42-43) 'unfair methods of competition, such as local price cutting at the points where necessary to suppress competition, espionage of the business of competitors, the operation of bogus independent companies, and payment of rebates on oil, with the like intent,' etc. . . .

"The phrase 'unfair methods of competition' in section 5 of the Federal Trade Commission Act, at least includes all involuntary restraints of trade by one competitor against another. I cannot conceive of an unfair act of one competitor against another, condemned by the Sherman law, which at the same time would not be prohibited by section 5 of the Trade Commission Act."

(Statement of Hon. William S. Culbertson, Chief Examiner of the Federal Trade Commission, and recently appointed to the Tariff Commission, quoted in Hearings before the Committee on Interstate Commerce, United States Senate, 64th Congress, 2d session on H. R. 17,350, January 5 and 6, 1917, p. 128.

procedure for the prevention of "unfair methods of competition" now contained in the Federal Trade Commission Act is extended to "unfair methods of competition used in export trade against competitors engaged in export trade even though the acts constituting such unfair methods are done without the territorial jurisdiction of the United States"; and second, the provision contained in Senator Pomerene's proposed amendment above quoted that whenever the Federal Trade Commission shall have reason to believe that any "association" has offended against any of the conditions of the bill it shall investigate the matter, and if the commission finds that the law has been violated it shall recommend how the "association's" business must be adjusted to conform to law and if the "association" fails to comply with this recommendation, the commission shall refer the matter to the attorney-general. These provisions are complementary to each other: the first covers acts that may not constitute a breach of the conditions on which the "association" is relieved of the uncertainties of the Sherman Act and the Clayton Act but which are nevertheless undesirable, and enables the commission to prosecute for them; and the second covers acts that do constitute a breach of the conditions on which the "association" is relieved of the uncertainties of the Sherman Act and the Clayton Act, and enables the attorney-general to prosecute for violation of these Acts if the "association" does not readjust its business when warned by the commission.

The Webb Bill, in the form above described, has substantially enlarged the operation of the existing antitrust laws. It contains a provision against the enhancement of prices within the United States which does not require proof of restraint of trade or "unfair methods of competition" within the United States to become effective. It extends the Federal Trade Commission Act beyond its present application, and forbids "unfair methods of competition used in export trade against competitors engaged in export trade, even though the acts constituting such unfair methods are done without the territorial jurisdiction of the United States," and provides new remedies appropriate for the enforcement of these and its other provisions. Here, plainly, are notable additions to the rigors of the existing antitrust laws. In compensation for this, the bill simply lays down, as a definite

rule of construction of the antitrust laws, that they shall not be construed to forbid certain kinds of agreements or acts, on condition, always, first, that such agreements and acts are made or done only by "associations," and second, that such agreements and acts avoid all the specifically described results hereinbefore discussed. Whether this rule of construction is at all different from what the courts would apply to the existing antitrust laws has been very seriously doubted. The Federal Trade Commission plainly regards this as really no change whatsoever in the existing antitrust laws, but merely an explicit statement of what they mean already.²²

²² Summarizing, in a letter to the Senate, the results of its investigation of competitive conditions affecting Americans in international trade, the Federal Trade Commission, on May 2, 1916, declared that "other nations enjoy marked advantages in foreign trade from superior facilities and more effective organizations," and that "doubt and fear as to legal restrictions prevent Americans from developing equally effective organizations for over-seas business, and that the foreign trade of our manufacturers and producers, particularly the smaller concerns, suffers in consequence." Moved by these considerations, the commission earnestly recommended "the immediate clarification of the law to permit co-operation among Americans for export trade." In conclusion, the commission impressively stated:

"The commission feels that it would fail of its duty if it did not urge the pressing need of such action immediately. If American business men are to make the most of the great opportunities now before them, are to build securely in foreign trade, and are to avoid disaster in the shock of the stern and determined competition that will doubtless follow the war they must at once perfect the organization demanded by the conditions of international trade."

Since sending this letter to the Senate the commission published, in its report above mentioned of nearly a thousand pages on American export trade, the information it collected on this subject from special reports for the commission from the United States consuls, from public hearings by the commission, from research by the commission in published material, from inquiry cards and formal schedules sent to more than 25,000 American business and professional men, and from investigations in this country and abroad by the commission's field agents. The final recommendations of the commission, based on this extraordinarily comprehensive study, were emphatic on this point:

"The commission believes" says the report, "that American exporters should be enabled to compete in foreign markets on more nearly equal terms with foreign competitors. It also believes that

Enough has already been said to demonstrate that the Webb Bill, with all its provisions and qualifications, will nevertheless afford a substantial degree of relief to American exporters. That a bill drawn on some other theory might accomplish the same result in a more satisfactory manner, is, of course, always possible. Senator Poindexter, for example, has proposed a statute of a single sentence simply permitting anybody engaged in foreign commerce to maintain common selling agencies abroad. Other Senators have suggested the legalization of agreements for exclusive sale and exclusive agency in foreign countries, subject to conditions somewhat similar to those in the Webb Bill as favorably reported by the Senate Interstate Commerce Committee, February 15, 1917. Whether Senator Poin-

the smaller manufacturers and producers, so far as they desire, should be enabled to share in such foreign business. It is convinced that for these purposes co-operation in export trade should be permitted. It knows that doubt as to the application of the antitrust laws now prevents any marked development of such co-operation. It does not believe that Congress intended by the anti-trust laws to prevent Americans from co-operating in export trade for the purpose of competing effectively with foreigners where such co-operation does not restrain trade within the United States and where no effort is made to hinder American competitors from freely engaging in export trade. It is not reasonable to suppose that Congress meant to obstruct the development of foreign commerce by forbidding the use in export trade of methods of organization which do not operate to the prejudice of the American public, which are lawful in the countries where the trade is to be carried on, and which are necessary if greater equality of opportunity is to be afforded Americans in meeting foreign competitors. The commission, therefore, respectfully recommends that Congress enact declaratory and permissive legislation to remove the present doubt as to the law and to establish clearly the legality of such co-operation."

To the same effect, Hon. William S. Culbertson, chief examiner of the Commission, says:

"The United States Supreme Court has held that voluntary restraints of trade are reasonable, *i. e.*, lawful, when no public, *i. e.*, American, interest^a is prejudiced by unduly restricting competition or unduly obstructing the course of trade.

"The argument that any voluntary restraint of trade among American competitors in marketing their goods abroad is a reasonable restraint of trade within the meaning of the Sherman law may be stated in the form of a syllogism:

dexter's proposal would satisfy those who desire assurances regarding publicity and against the possibility of molestation of independent American exporters and the possibility of improper enhancement of prices within the United States is still an open question. The Federal Trade Commission's comprehensive report upon American export trade, however, abundantly demonstrates that proposals looking only to common selling enterprises and agencies abroad will be inadequate for the variegated requirements of widely differing exports in widely differing markets, and that nothing short of permission broad enough to include not only common selling enterprises and agencies, but also the apportionment of profits, losses, business and territory and every kind of arrangement for effective effort in the sale of exports abroad will meet the situation.

"1. A voluntary restraint of trade, in order to be unreasonable within the meaning of the antitrust acts, must prejudice the public, *i. e.*, American, interest.

"2. No American interest is prejudiced when American corporations, who are competing in the domestic market in the purchase of raw materials, employment of labor, and the sale of products, eliminate competition voluntarily among themselves in the marketing of their goods in foreign countries.

"3. Therefore, associations engaged solely in export trade, regardless of the proportion of a given industry involved, are not illegal under the Sherman law. . . .

"Too much emphasis cannot be placed upon the fact that the Webb Bill begins with the assumption that the force of the present antitrust laws of the United States is not to be lessened. It then provides:

"(a) That the antitrust laws shall apply to export associations in so far as they may restrain trade within the United States. (This, of course, adds nothing to the law as it now exists.)

"(b) That involuntary restraints of the export trade, even when done outside the territorial jurisdiction of the United States, shall be unlawful. (This adds to the law as it now exists.)

"(c) That voluntary restraints of trade among American exporters in the marketing of their goods abroad are reasonable and legal.

"(d) That every association engaged solely in export trade shall report fully to the Federal Trade Commission each year and be subject to certain penalties if it fails to comply. (Sec. 5 of the Webb Bill.) This supervision will be an effective restraining influence upon any surreptitious activities of an export association which might be or tend to be in violation of our antitrust laws."

INTERNATIONAL LAW AND WAR.

By HENRI LA FONTAINE.

Lawyers and the public at large are asking anxiously if international law will survive the actual crisis and if it is not already buried forever with the dead on the battlefields. Some experts, however, have endeavored to prove that not only international law is alive as it was never before, but that the belligerents have been the keenest respecters of its provisions, that they have nearly all conformed to the provision adopted at The Hague in 1907 relative to the opening of hostilities and that consequently 32 declarations of war or ultimatums were exchanged by the warring nations. But what about the other provisions of the so-called laws of war, which, for the first time in history, were approved in 1899 by nearly all the so-called civilized peoples of the world? We have at least one answer to this question and, very unusually, it was given before it was asked for: *necessity know no law*. It is in fact a more impassioned expression of the old dictum: *inter arma silent leges*.

The first remark to be made is that we must discriminate and distinguish between international private law, international administrative law and international public law. There is no doubt that the rules accepted to solve conflicts of private law, to unify commercial and maritime law, to protect the world over patents, trade-marks, copyright, will survive the war, as greatly they are hampered in their actual application. As for the conventions which provide for the postal, telegraphic, scientific, agricultural, diplomatic and consular relations of the states, despite the interfering censorship, they have largely remained in force.

But there exists no public international law, if we except the provisions concerning the pacific settlement of international disputes, namely, those ruling the Permanent Court of Arbitration at The Hague. Even those provisions have no compulsory character because each state is free to refuse any recourse to mediation, commissions of inquiry or arbitration if it judges that its *vital interests* or its *national honor* are involved. As for the so-called laws of war, which form the bulk of written public international law, they are no laws at all, because they cannot be enforced, and mainly because the states have reserved purposely their right not to abide by them. Some of

the conventions, indeed, adopted at both Peace Conferences, contain a provision which limits their duration to five years; this was the case, namely, for the bombardment of fortified cities from balloons or other aircraft. In other conventions, it is declared that they will no more be applicable as soon as among the belligerents there happens to be a state which is not a signatory or has not sent in a formal ratification; now in fact Turkey has abstained from ratifying any of the conventions adopted at The Hague in 1907 and this circumstance alone has rendered all the conventions containing such a provision worthless and void. Finally some of the provisions of the said conventions are drafted in such terms that the parties are free to act or not to act at their pleasure; some of the formulas used are as follows: *as far as circumstances allow, as far as possible, unless military exigencies render it impossible, as soon as military exigencies permit*. Is it clear now, to every sane and unprejudiced reader, that the diplomats gathered at The Hague in 1899 and 1907 tried simply to give some satisfaction to the wishes expressed by the peoples to humanize war and deprive it of its horrors and unnecessary sufferings? Perhaps some among them have been inspired by the machiavelic idea that, by persuading the masses that war in the future could be waged with some kindliness, it would be more easy to induce the peoples to accept war as the means of settling international disputes. But they have all agreed in proclaiming laws of war which were not binding or binding only for a short time. It was sham legislation and it was intended to be sham legislation.

Now the hour came when these so-called laws of war had to be applied and kept. The first act of the actual war was the invasion of the territory of neutral states, an open and avowed transgression of one of these laws of war so solemnly agreed upon. The hope of mankind, when Wright drove his first flying machine towards the skies, was that aircraft should never be used for the killing of men and this hope was embodied in a special provision at The Hague signed by 16 only of the 42 states represented, and among those who disagreed were Germany, France, Austria and Russia; we know what the Zeppelins did at Scarborough and elsewhere. Another provision prohibits the use of poisoned bullets, but wholesale poisoning is performed on all fronts with undreamed

of tortures for the victims of this devilish and hideous treachery. Lives and private property of civilians are to be respected, but reprisals are admitted if an officer of the lowest rank is of opinion that they are justified: law not applied by a judge, but by the executioner and often by the beneficiary, and you have wholesale looting, and burning, and fining, and killing. Private property at sea, contraband excepted, is to be exempt from capture, but the range of hostile destination may be extended at will by any of the belligerents and nearly all products declared contraband of war. Enslavement of the population in occupied territories is prohibited, but you assist with amazement to wholesale deportations. Prizes at sea can be made only after warning and search, but submarines sink boats, neutral and belligerents alike, without search or warning.

Now some jurists are satisfied because at least the regulations regarding wounded and prisoners are pretty well respected. We do not know actually if the bombardment of field-hospitals, the killing of stretcher-bearers and nurses, the mismanagement of prisoners' camps, may be considered as established facts, but ambulance-ships were torpedoed. The truth is that prisoners and wounded are generally well treated for fear of probable reprisals and not by compliance to an unenforceable law. During years it was asked that some device should be agreed upon in order to secure the indictment and chastisement of those who would disregard the provisions of the Red Cross Convention of 1864, but the states unanimously and repeatedly refused to lend a hearing to this suggestion.

What then is left of the so-called laws of war? Expanding and explosive bullets are prohibited and they seem not to have been used *till now* by the actual belligerents. But shells and shrapnells are lavishly used, explosive projectiles I guess of unusual size and maiming and wounding and mangling as mangling, wounding and maiming were never performed before. "It is one great obscenity, killing for all times the legend of war's glory and romance!" A true commentary by a hardened war correspondent.¹

To prate of laws of war is a disgusting mistake. War is crime, war is a crime made up of exactly the crimes liable in all

¹ Philip Gibbs, New York Times, March 15, 1917.

countries to the severest penalties: murder, arson, plunder, rape and poisoning; crimes imposed as their highest duty to men who are no criminals! And legists with hearts and brains are of opinion that such unlawful acts can be lawfully perpetrated. Laws of war, lawful lawlessness! Why not laws of murder, laws of arson, laws of plunder, laws of rape, laws of poisoning? Is it possible to imagine a more stupendous misconception, a more tremendous inconsistency?

War is crime and mankind has to get rid of it. Mankind got rid of human sacrifices, of cannibalism, of torture, of slavery, of witchcraft, of private wars and duelling, all once legalized evils, and it would be unable to get rid of wholesale slaughter, the only scourge surviving the ancestral centuries of savagery and barbarism, a man-made scourge?

Think about it: war a crime and public international law reversed at once! No more laws of war, but laws *against* war; no more warlike peoples all alike, but normal and abnormal peoples; public force used no more to kill men, but to restore order; the society of states organized to police the world, the commonwealth of nations transformed in a law-giving and law-applying community.

A social and political revolution? No, the logical outcome of centuries of fight and struggle in darkness and ignorance, a juridical upsetting, the task of the legists of the world and, if they will, an achievement of the near future.

REVIEW OF IMPORTANT LEGISLATION IN THE UNITED STATES DURING THE YEAR 1916.

By PROF. THOMAS I. PARKINSON, LEGISLATIVE DRAFTING BUREAU, COLUMBIA UNIVERSITY.

FOREIGN RELATIONS.

The naval appropriation bill after providing for expansion of the navy, authorizes the President to suspend construction if, with the cooperation of the United States, an international tribunal is established to secure peaceful determination of international disputes which shall render unnecessary the maintenance of competitive armaments. This bill also declares it to be the policy of the United States to settle international disputes through arbi-

tration, and that the United States looks with "apprehension and disfavor" on increases of armaments, but realizes that a common agreement is essential to restrict further increases. The President is, therefore, authorized and requested to notify, not later than the close of the present war, other nations to send representatives to a conference to formulate a plan for a tribunal for the peaceful settlement of international disputes and to consider the question of disarmament.

The revenue act authorizes the President to put in force retaliatory methods for the protection of American interests. So long as a foreign country prohibits importation of a United States product not injurious to health or morals, the President may retaliate by prohibiting the importation of any article from that country. The President is also authorized to prohibit importations from any country if, during a war in which the United States is not engaged, he believes that the laws or practices of any foreign country are contrary to the law of nations and prevent or restrict importation into any foreign country of the products of the United States. If he believes that because of such laws or practices of a belligerent, any vessel is giving undue preference to or discriminating against any shipper or shipment, he is authorized to detain such vessel by withholding clearance. Violation of any proclamation by the President in pursuance of this authority is punishable by heavy fines, imprisonment and forfeiture, and in addition the President is authorized to use the land or naval forces to compel compliance.

The revenue law also creates a tariff commission to investigate the administration and fiscal and industrial effects of our customs laws. The commission is authorized to study commercial relations between the United States and foreign countries. It is not, however, empowered to make any recommendations to Congress except when so requested.

Congress also created a shipping board with power not only to construct or purchase vessels to be sold, leased or chartered for trade, but also to investigate and regulate the rates and services of interstate and foreign carriers by water. This act regulates commerce by water much as the interstate commerce act regulates commerce on land.

The revenue bill punishes by fine or imprisonment, and by triple damages, any importer who systematically sells imported articles within the United States at a price substantially less than their actual market value or wholesale price at the time of importation in the principal markets of the country of their production, if such underselling is done to prevent the establishment of or injure an industry in the United States, or to restrain or monopolize trade or commerce in such articles in the United States. This provision is popularly known as the "anti-dumping" law.

RELATION OF FEDERAL GOVERNMENT TO THE STATES.

In this country the relation of the federal government to the states is to be determined by the Federal constitution. Important acts were passed by Congress during 1916 which, if constitutional, not only extend the federal power beyond preconceived notions of its limitations, but open the door and point the way to further extensions. The demand for this legislation increasing the federal jurisdiction is due in part to the difficulty of obtaining and enforcing state legislation to accomplish pending social and economic reforms. The Federal Child Labor Law prohibits shipment by producers or dealers in interstate or foreign commerce of the products of mines and factories employing children under 14 or working children between 14 and 16 for more than eight hours a day or six days a week, or between 7 P. M. and 6 A. M. This prohibition of interstate commerce differs from former prohibitions in the fact that instead of prohibiting the shipment of goods which in themselves are dangerous, dishonest or impure, it prohibits shipments of goods not in themselves objectionable and which are excluded from interstate commerce solely because of the conditions under which they were produced. This act illustrates one of the avenues for extending by indirection the powers of the federal government, namely, by prohibition of interstate commerce.

At the same session Congress passed another act illustrating another important method of extending the federal jurisdiction by indirection, namely, by prohibitory or regulatory taxation. The cotton futures act, incorporated in an agricultural appropriation bill imposes a prohibitive tax on certain contracts for future delivery, and the revenue act imposes specific duties on

specified articles imported into this country to accomplish what might otherwise have been accomplished by direct regulation. If the Supreme Court holds the child labor law and the cotton futures tax constitutional, Congress will be able to accomplish by indirect use of the commerce and the taxing power many legislative purposes which have heretofore been considered beyond its jurisdiction.

Congress also included in the agricultural appropriation law an act providing for the establishment of official grain standards, and prohibiting the shipment in interstate or foreign commerce of grain sold by grade, unless inspected by a licensed inspector and unless the grade by which it is sold is one of the grades established in the official grain standards. This act does not stop with mere prohibition of shipment, but forbids in any contract to sell by grade reference to grain as being of any grade other than that fixed in the grain standards, and makes violation of this provision a misdemeanor. The same act provides for licensing and regulating warehouses in which agricultural products are stored for interstate or foreign shipment.

Another act of Congress provides a comprehensive federal farm loan or rural credit system, to be administered by a Federal Farm Loan Board.

CONSTITUTIONAL REVISION.

Massachusetts was the only state in which the legislature of 1916 proposed a constitutional convention. The people of New York having rejected by a tremendous vote the revision proposed by the convention in that state in 1915, voted down the proposal to hold another convention, which was submitted in accordance with a mandatory constitutional provision at the general election in 1916.

The voters of Tennessee, by a small majority, refused to sanction the convention which had been proposed by the legislature of 1915. In South Dakota the voters have approved a convention on a proposal which was initiated and submitted without legislative action. The Massachusetts convention will assemble on the first Tuesday of June, 1917.

JUDICIAL ORGANIZATION AND PROCEDURE.

The organization and procedure of the courts was little changed by the 1916 legislation. This was particularly true of state legislation. Possibly it is an indication that legislators begin to realize that one of the best ways to improve judicial administration is for the legislature to let the courts alone. Congress enacted an amendment to the Judicial Code, which provides that no United States appellate court shall dismiss a writ of error solely because an appeal would have been the proper procedure or *vice versa*. The effect of this act is that hereafter a mistake as to the method of carrying a case up for review will be harmless error, and will not delay the hearing of the appeal. This act also contains a provision which will be of interest to practising lawyers and should save the time of the Supreme Court. It provides that decisions of the Circuit Court of Appeals in cases arising under the Federal Employers' Liability Act, and other railroad labor acts, shall be final except for review on *certiorari* by the Supreme Court. This will give the court the power to control the number of cases under this act which come before it. There has been a noticeable increase in the number of cases, particularly under the Employers' Liability Act, reported in the Supreme Court reports, and it is probable that the interpretation of the liability act has taken too much of the court's time.

While there were no important state acts directly dealing with judicial procedure, a number of the state enactments deal with efforts to assist civil litigants in the enforcement of their rights and the collection of redressive damages. An interesting variation of the public defender idea, as applied to civil cases, is found in a New Jersey act (Ch. 54) creating a bureau in the labor department to assist injured employees in recovering the compensation to which they are entitled under the workmen's compensation law. This bureau is authorized, in case settlement of a compensation claim is delayed, to certify the facts relating to the claim to the county court. This certificate operates as a petition. Thereupon the court is required to assign counsel to represent the claimants, and if it be found that settlement had been delayed without reasonable excuse, the claimant's expenses, including legal services in his behalf, shall be assessed as a penalty against the employer. This is an interesting provision for state aid to

that class of litigants least likely to possess the initiative or the money necessary to begin and prosecute an action in the courts for the assertion of their rights and the redress of wrong done them.

A similar provision for state aid in the prosecution of claims is found in a Virginia act (Ch. 77), which regulates the business of selling farm produce on commission. Licensed commission merchants are required to keep records of goods received and sold which shall be open to the inspection of the commissioner of agriculture. A consignor who fails to obtain satisfactory settlement of claims against such merchants is authorized to file certified complaints with the commissioner of agriculture, who is thereupon required to hold a hearing to ascertain the facts out of which the complaint arose. If the commissioner finds facts which justify the revocation of the merchant's license, he is required to bring suit on the merchant's bond to recover for the complainant the moneys due him.

These efforts to render state aid to litigants are probably inspired by a recognition of the technical difficulties and delays which hinder prompt judicial redress of wrong to persons who for one reason or another are handicapped in the prosecution of their rights. The difficulty of securing redress through judicial litigation is partially responsible for another interesting group of statutes which, in the interest of what is sometimes called preventive justice, seek to prevent by administration a wrong which, without the statute, could only be redressed by an action for damages. An interesting enactment of this kind is the Kentucky fire marshall law (Ch. 19), which makes it the duty of owners to prevent or extinguish fires and gives to a state fire marshall power to prescribe rules and regulations fixing standards and methods of prevention and to compel compliance therewith. Whether or not this statute extends the common law duty of the owner with respect to liability for injuries done by fire originating on his premises, it is important as a legislative declaration of the general duty with a delegation by the legislature to an administrative officer of power to prescribe standards of prevention or extinguishment and to require compliance with those standards in the interest of preventing fire. This statute represents an application to the field of fire losses of the idea upon which much

of our factory legislation is now founded, namely, a legislative declaration of the duty to make places of employment safe and sanitary, with delegated power in an administrative body to prescribe standards of safety and sanitation, and to require compliance therewith in the interest of preventing work accidents. These statutes seek by administrative regulation to prevent wrong, and for this purpose provide for civil or criminal penalty for the breach of administrative regulations. The person subject to such statutes is punished not for the injury done by their violation but for their very violation.

LAW OF DOMESTIC RELATIONS.

Changes in the law respecting family relation and property are found in statutes dealing with the custody of children and rights in the husband's wages and property. Va. (Ch. 417) declares that the father and mother are equally entitled to the custody, services and earnings of their children, but that in determining controversies respecting the custody of a child, the court shall be guided by what it believes to be the welfare of the child. This changes the common law preferential right of the father. Md. (Ch. 325) provides that the descent of real property shall be the same as that of personal property, except that the surviving spouse may within six months after the decedent's death elect to take dower. This is evidently an entering wedge to the abolishment of dower. La. (Act No. 102) and Mass. (Ch. 208) give the wife a control over the husband's wages by providing that no assignment of his future wages shall be valid unless signed by her as well as him.

REAL ESTATE LAW.

It is not often that a statute deals with a more technical problem of the common law than that involved in an act of Mass. (Ch. 108), respecting contingent remainders. It is declared that such remainders shall take effect "notwithstanding any determination of the particular estate in the same manner in which it would have taken effect if it had been an executory devise or a springing or shifting use, and shall, as well as such limitations, be subject to the rule respecting remoteness, known as the rule against perpetuities, exclusive of any other supposed rule respecting limitations to successive generations or double possibilities."

COMMERCIAL LAW.

In addition to the enactment in a few states of the uniform commercial acts recommended by the conference of commissioners on uniform state laws, there were acts of interest dealing with bank deposits and commercial contracts. R. I. (Ch. 1389) and Miss. (Ch. 120) make the drawing of checks on a bank in which the drawer has not sufficient funds a criminal offense, while N. J. (Ch. 123) authorized the payment of checks presented within 10 days after date, notwithstanding the death of the drawer prior to such presentation. This reverses the common law rule that the warrant to pay dies with the drawer.

An interesting attempt to deal with fraudulent conversion of goods secured "on approval" is made in Va. (Ch. 280), which provides that any person who with intent to defraud obtains goods on approval and then refuses to return them on demand in unused condition, or to pay for them is guilty of larceny. This act does not apply, however, unless an "on approval" tag is attached to the goods when delivered, or unless the demand for their return is made within five days after delivery.

Another Va. act (Ch. 13) attempts to deal with the contract of service and to prevent laborers who have received advance pay quitting before completing the service for which they have been engaged. This is another of the frequent attempts made in the South to bind negro laborers to the performance of a consistent service. It is an effort to bring the criminal law and its enforcement to the assistance of the employer in compelling the laborer to work out his contract. The act provides that persons who with intent to defraud enter into written contracts for personal services in the cultivation of the soil and obtain advance money on such contract, and then fraudulently refuse to perform the service or refund the money are guilty of larceny. The peonage statutes have been held unconstitutional as violating the prohibition of involuntary servitude contained in the 13th amendment to the United States Constitution. An Alabama statute, similar to this Virginia enactment, but containing an additional provision which made the laborer's quitting pending the completion of his contract practically conclusive evidence of intent to defraud, was held unconstitutional in *Bailey vs. Alabama*, 219 U. S. 191. The decision in this latter case does not foreclose the possibility

of bringing the criminal penalty to the assistance of the employer in the enforcement of a contract of service. There is, however, a serious question how far the criminal penalty may be added to the civil disadvantages which flow from the breach of contract. This problem is not of local importance because it is prominently involved in the effort to limit the right of certain employees, particularly those engaged in the operation of public utilities, to strike or leave the service within the period for which they have engaged themselves.

STATUS VERSUS CONTRACT.

No intelligent critic of current legislation can fail to observe a tendency to substitute status for contract in the determination of individual rights and duties. Sir Henry Maine said that the law tended to develop away from prescribed status to contractual relation voluntarily assumed. More and more our statutes are declaring the status of persons and preventing its change by contract. Hours and conditions of labor, wages, and other incidents of employments are prescribed beyond the power of the individual to alter by contract. This, of course, is due to the fact that in our complex modern life the laboring man is recognized as handicapped in contracting with the employer.

The same effort to prevent the weaker citizen from contracting away his substantial and essential rights is illustrated in many fields of law. Perhaps a more important group of statutes defining more clearly the rights and duties of individuals is found in laws which, building on some general principle of the common law, like the duty of public utility companies to charge reasonable rates or of employers to provide a safe place to work in, endeavor to give effect to these general principles by working out standards of reasonableness and safety more easily applied and enforced under particular circumstances.

As has been pointed out above, a part of the reason for such statutes is due to the difficulties and delays experienced by litigants in seeking redress of wrong in the civil courts. We are turning to legislation enforced by administration to avoid the defects in operation of general principles enforced by private litigation seeking redressive damages. This current away from the courts and toward administration can only be stemmed by the

development of the judicial organization and procedure, so that it may efficiently, promptly and with justice deal with all questions of right and wrong arising between individuals in the community. This means more courts, specialized courts, and for many types of litigation the discarding of technical rules of evidence and procedure.

Workmen's compensation acts are good examples of resort to legislation and to administrative bodies with semi-judicial powers to settle controversies between individuals which were clogging the courts, and with which the courts had demonstrated themselves unable to cope satisfactorily.

Kentucky was the only state to add a workmen's compensation law to its statutes, but in several states where such laws had previously been passed, amendments to increase the effectiveness of their administration and particularly of their insurance features, were enacted. The emphasis on insurance of the workmen's compensation liability in order to make certain that the claimant may collect irrespective of the financial solvency of the employer, has directed attention to the difficulty of securing redress in tort cases where the defendant is not financially responsible. N. J. (Ch. 136) requires the owner of a jitney to take out an insurance policy indemnifying himself against liability for injuries to others, and authorizes persons injured to recover their damages from such insurance.

The fundamental question is whether we shall have our law enforced by the individuals claiming to have been injured or by paid professional agents of the state. The tendency unquestionably is toward the latter, and it is one of the causes of the tremendous increases in the cost of government. We may yet be obliged to discover ways and means of facilitating individual initiative in the enforcement of law by the prosecution of his rights and the vindication of his wrongs, and we can do this only by seeing to it that the organization of our courts and their procedure is such as to invite litigants who have suffered wrong to seek judicial redress. Perhaps there is a suggestion in the Mississippi act (Ch. 116), which provides that in action for damages for injuries caused by motor vehicles, proof of injury and of a violation of the regulatory provisions of the act shall constitute a *prima facie* case for the plaintiff. If our factory acts had likewise

provided that the injured employee could establish a *prima facie* case by proof of injury and of violation of a legislative regulation, we might not have been obliged to resort to such expensive systems of police inspection and criminal prosecution in order to stimulate efforts on the part of employers to make their places of employment reasonably safe and thereby avoid costly accidents.

TAXATION.

The increasing cost of government, state and federal, has resulted in a demand that new sources of revenue be found for both branches of our government. Moreover, the tendency of the federal government to encroach upon sources of revenue heretofore tapped only by the states, as, for example, inheritance taxes, has developed a need for satisfactory division of the fields of available revenue between the state and federal governments. The federal government cannot continue to draw its needed revenues from interior as distinguished from customs sources without interfering with the development of the state's systems. Several of the states expanded their taxes on inheritances as one of the available sources of revenue, while the federal government enacted what is known as an estates tax. These taxes indicate the effort to put the burden of taxation where it can be, if not readily borne, at least collected. The tax on inheritance is paid by the recipient of property from the decedent's estate. The tax on the estate is paid by the executor or administrator out of the net funds in his hands for distribution. In each case it is a tax taken from property which has not yet reached the person who is to have the beneficial use of it. It is, therefore, easier to collect it and its collection is borne by the person whose property is thereby depleted, with less feeling of burden because it is taken from something he never had in his possession.

The Federal Estates Tax was carefully drawn so that it would not duplicate the inheritance taxes of the states, but would come off the net estate before the distributive shares were determined rather than off the distributive shares.

The necessity for increased revenues has driven the states to seek new means of increasing the revenue derived from the tax on personality and particularly intangible personality.

The unsatisfactory experience with the collection of the general property tax, that is, a tax at a fixed rate on all property assessed at its market value, has resulted in efforts to substitute for a tax on the market value of personal property a tax on the income of the individual whether derived from personal effort or from property, on the assumption that income more nearly represents the ability of the individual to pay. A Massachusetts act (Ch. 269) imposes an income tax which recognizes the difference between income derived from money at interest and income derived from trades, professions and business. Income derived from investments is taxed at the rate of 6 per cent. This is practically the same as a $3\frac{1}{2}$ mill tax on the capital value of the investment, that is, it is practically the same as the low rate tax on personal property which has been in force for a number of years in Pennsylvania, Connecticut, Maryland, Minnesota and a few other states. The Massachusetts law imposes a rate of $1\frac{1}{2}$ per cent on income derived from trades, occupations, professions or business generally.

Prior to 1916 there was practically no tax in the United States levied directly on the net balance of an estate in the hands of the executor or administrator. It was for this reason that Congress seized the opportunity to levy a tax to obtain needed income from this untapped source. Rhode Island, however (Ch. 1339), imposed a tax of $\frac{1}{2}$ of 1 per cent on the net estates of decedents. If this policy should be copied in other states it would result in serious double taxation. Indeed, it is now true that in one state under certain contingencies the federal and state governments extract by taxation 45 per cent of the estate.

Congress also inserted in the revenue bill a revision of the income tax law increasing the normal tax from 1 to 2 per cent; an excise tax of $12\frac{1}{2}$ per cent on the profits on munitions manufactured in the United States for a period extending to one year after the end of the European War, and a capital stock tax of 5 mills on the fair value of the capital stock of a corporation in excess of \$99,000. Other important tax enactments of Congress for the year were the prohibitive tax on cotton futures, specific duties imposed by the revenue act on articles imported under an agreement that persons in the United States are to be restricted

in using or dealing in such articles, and the creation by the revenue act of a tariff commission.

NOTE.—The foregoing review is based on the report of the American Bar Association Committee on Noteworthy Changes in Statute Law for the year 1916. The report will be found in the Year Book of the Association.

D. FOREIGN LEGISLATION, JURISPRUDENCE AND BIBLIOGRAPHY.

1. CANADA.

The overshadowing cloud of war naturally has had a great effect in determining legislation during the past year. Canada has contributed nearly 400,000 men to the Allied Forces, and these are naturally a source of anxiety as well as of pride to Canadian legislators. It may be added that more than one member of the Dominion Parliament and of the Local Legislatures has proved his patriotism by service at the front, of whom one has sealed his faith with his blood and another is a prisoner in the hands of the enemy.

DOMINION.

The effect of the war is shown in the appropriation of \$250,000,000 by the Dominion for war purposes (c. 28), a loan of \$75,000,000 authorized (c. 3), an increase in the Customs tariff (c. 7), a tax on business profits of 25 per cent on all profits beyond 7 per cent on the capital of incorporated companies and 10 per cent of the capital employed (c. 11) by private individuals or partnerships. The war had also its influence in determining Parliament to grant a bounty for the production in Canada of zinc from Canadian ores (c. 27), the extension of the time during which white sulphur may be used in matches (c. 4) and the power given to banks to take valid securities from those engaged in farming and stock-raising, such as have long been taken from lumbermen, etc. (c. 10).

Life insurance companies are compelled to invest at least 50 per cent of their increase in assets in Canadian securities (c. 18).

The growth and triumph of prohibition sentiment are manifested in the Dominion legislation preventing the shipping, etc., of liquor with knowledge (or intent) that it is to be used unlawfully.

Business, however, goes on as usual, one railway is bought (c. 22), another assisted (c. 23), two are incorporated and the charters of about a score are amended. Insurance, trust and other companies are incorporated and there are 24 divorces granted, an unusually large number.

PROVINCIAL LEGISLATION.

ONTARIO.

The effect of the war is seen in Ontario by the Soldiers' Aid Commission (c. 3), the extension of the objects for which municipalities can validly raise taxes and the validation of grants already made for patriotic purposes (c. 40) and the empowering of trustees to delegate their trusteeship during the war (c. 29). (All matters of "property and civil rights" being in the jurisdiction of the Provinces, and we having no "constitutional limitations," the provincial legislatures may do as they please in respect of all matters of property and civil rights.)

The natural resources of the Province are beginning to be a subject of anxiety, the immense natural wealth of the Province having been seriously cut into, an influential "organization of resources committee" has therefore been formed by the legislature (c. 4), game and fish further protected (c. 60), the owners of water power forced to apply the methods of efficiency and economy (c. 21), and the Hydro-Electric Commission given power to utilize the waters of the Niagara and Welland rivers and their tributaries, etc., by diverting or otherwise employing the streams (c. 20). I may say that owing to the enormous increase in manufacturers of war material and otherwise in Ontario, it has been found necessary to divert to Ontario factories a great part of the electric power heretofore exported to the United States from our Ontario Niagara Companies.)

The automobile has made highway improvement necessary and the Province has set aside an additional \$1,000,000 for that purpose: the motor road from Toronto to Hamilton expected to cost \$600,000 has proven more costly than was estimated and the extra cost of over \$300,000 has been provided for.

What perhaps is of most interest to Americans is the legislation validating otherwise invalid agreements for the supply to munici-

palities by the Hydro-Electric Commission of electric power (c. 19) and of electric railways (c. 37).

There is considerable legislation concerning railways. The Provinces have power to incorporate railway companies within the Province, though most railway companies prefer Dominion incorporation.

Among the numerous private acts there are two which might call for attention, both modifying the provisions of the wills of deceased persons (cc. 116, 117); there is one (c. 118) authorizing the Law Society of Upper Canada to call a named gentleman to the Bar.

QUEBEC.

The legislation of Quebec is not interesting; the progress of temperance is shown by the strengthening of the Temperance Act (cc. 12, 13), and there are a number of statutes authorizing the governing bodies to call to the Bar and to license as dentists.

NOVA SCOTIA.

In Nova Scotia the war has produced statutes authorizing municipalities to collect taxes to assist recruiting (c. 4) and to contribute to the Canadian Patriotic Fund (c. 30); they are also authorized to levy money for the employment of the blind (c. 5).

The necessity for promoting mining and smelting operations is shown by the statute relieving those who obtain a licence from the government for such purposes from actions at the instance of persons injured except by negligence (c. 1).

There is the usual large amount of local and private legislation, none of which calls for remark.

NEW BRUNSWICK.

In New Brunswick, the Canadian Patriotic Fund obtains a Provincial grant of \$25,000 (c. 4) and the municipalities are empowered to contribute to its funds (c. 5) and make assessments for that purpose (c. 8); land is granted to soldiers or their heirs (c. 6) and farm settlements after the war are provided for (c. 9).

The conservation of natural resources is contemplated by the amendment to the mining laws (c. 31) and the act relating to the

manufacture of spruce and other pulp wood (c. 33). A still more important conservation of natural resources is provided for in the act for the protection of children (c. 39).

The steady progress toward complete codification is manifest in the Company Act (c. 14), and the improvement in country life by the act for the incorporation of rural telephone companies (c. 17). Married women are placed on the same level as to rights and liabilities as their spinster sisters (c. 29).

But the most important legislation is the Prohibition Act (c. 20) which absolutely prohibits the sale of liquor after May 1, 1917. Of course provision is made for physicians and dentists. The act is confessedly a compilation: the very useful plan is adopted of giving a reference to its source at the end of each section. We find the former New Brunswick Acts referred to, but also those of Ontario, Manitoba, Prince Edward Island and Kansas.

The private and local legislation is as usual—railways, libraries, power companies, etc., are incorporated. Perhaps two acts may be mentioned. The first (c. 49) to incorporate an association of graduate nurses and to establish a Provincial registration of qualified nurses. This shows the desire of nurses to be recognized as members of a profession which is wholly admirable. We see the same thing in accountants, architects and others, and while the Province by this act provides for a register of qualified nurses, it does not prevent others from engaging in nursing which is sometimes sought. The other act is c. 58 which changes the name of A. G. It is, of course, well known that at the common law anyone may assume any name (speaking generally) he pleases if this is not done for any fraudulent or unlawful purpose, but many desire to have a statutory change. The well-known Amor de Cosmos, of British Columbia, was originally William Smith and when he applied for a change to Amor de Cosmos, he narrowly escaped a change to Amor de Muggins. In Ontario, occasionally one desiring to change his name files a deed poll in the Supreme Court, sometimes he just changes it and if he can get his neighbors to use the new name, that is his name. We shall see that the Province of Alberta has made formal provision for a change of name.

PRINCE EDWARD ISLAND.

At the regular session there was no legislation which is of interest outside the Island except possibly one change of name (c. 34). At the special session, a Special Provincial War and Health Tax was directed for Canadian soldiers who had become tuberculous (c. 35).

MANITOBA.

Manitoba having already passed a prohibition measure is now concerned with public utilities and the encouragement and improvement of agriculture. An agricultural college is provided for (c. 1), agriculture assisted (c. 2), a Public Utilities Commission organized (c. 66) and children are protected (cc. 10, 11).

BRITISH COLUMBIA.

In the Pacific Province free grants are given to soldiers (c. 35), they are relieved from hardship occasioned by the literal operation of the mining laws (c. 4), protected from actions at law (c. 74), returned soldiers are to receive homesteads (c. 59), and those at the front may exercise their franchise (c. 41) (at the recent election soldiers in active service did vote and the soldier vote carried the election in some cases). Trustees in active service may delegate their authority (c. 68, compare this with the Ontario statute, c. 29), and an illegal grant by the City of Victoria to the purposes of the militia is validated (c. 72).

Then, too, the mining industry is encouraged (c. 43) and ship-building (c. 57). The Province comes into line by an act for the compensation of injured workmen (c. 77) of far-reaching character.

A referendum upon prohibition and woman suffrage (c. 50) was favorable to both and the Prohibition Act (c. 49) comes into force July 1, 1917. Since this was written, the vote of the British Canadian soldiers in the trenches and in England awaiting their call to the front, has been received, and it is found that their vote overcomes the small majority in favor of prohibition. It is accordingly proposed to give prohibition in the Province (as the majority in the Province desire it), but to have another referendum after the war.

An act (c. 18) provides for the marking of eggs offered for sale, and there is the usual amount of local and private legislation.

ALBERTA.

The most important legislation is the Prohibition Act (c. 4) and an act (c. 10) providing a cheap and easy method for change of name by registering an application (with the consent of the Provincial Secretary), advertising, etc.

Corporations are further taxed (c. 13) and theater goers are also mulcted (c. 14).

In the private bills is one for graduate nurses (c. 35) not unlike that in New Brunswick (c. 49).

SASKATCHEWAN.

A levy is made of one mill on the dollar on all voteable property called "The Patriotic Tax," and also a tax of one cent per acre, and a loan of \$1,000,000 is authorized (c. 6). Volunteers are protected from actions at law during the war and six months thereafter (c. 7), and the prohibition law made more strict and effective (c. 35).

The usual amount is found of private bills, incorporations, etc.

The prohibition measure in Ontario is not quite the same as the others. In Ontario, at the last election, the opposition (the Reform Party) appealed to the electorate on the platform "Abolish the Bar." The government (Conservative Party) received the support of the licensed victuallers, hotel men, etc., who were in favor of the liquor traffic remaining and were successful at the election. The advance of public opinion due in some degree to the sale of liquor to our volunteers in khaki soon justified (if it did not compel) a change of front in the government, and with the unanimous approval of the opposition, the Prohibition Act was passed to become effective from 7 P. M., Saturday, September 16, 1916.

The act was passed avowedly as a war measure to conserve our young men, and it contains a provision for a referendum in June, 1919, on the question "Are you in favor of the repeal of The Ontario Temperance Act?"

YUKON TERRITORY.

In the Yukon Territory legislation for 1916, the only Ordinances worthy of remark are cc. 1, 3, 4 and 5.

C. 1 is an Ordinance (statute) providing for the equitable distribution among his creditors of the property of one who makes an assignment for the benefit of his creditors. Such an assignment takes precedence of judgments and executions not completely executed by payment, and the legislation follows in substance that of the Provinces, *e. g.*, Ontario. No power exists in a Province (or Territory) over bankruptcy, and so far the Dominion has not passed a general bankruptcy law.

* C. 3 is one more break in common law rules; it allows the court to award interest for such time and at such rates as the court may think right where the payment of a just debt has been improperly withheld.

C. 4 stiffens the existing liquor law and c. 5 provides for a plebiscite on the question of total prohibition to be voted on by the electors. (This vote was taken and resulted adversely to the Prohibition party by an exceedingly small majority.)

W. R. R.

2. LATIN AMERICA.

ARGENTINA.

LEGISLATION.

Boletin Oficial year XXIV, No. 6606, January 25, 1916.

Executive decree, pursuant to Law No. 9688 (see last year's Bulletin), regulating the liability of employers in cases of accidental injury to employees. Defines what kind of work falls under the act, and the responsibility of employer and provides for determination of employees' indemnity by his wages.

Boletin Oficial year XXIV, No. 6711, June 3, 1916. Executive decree. Importation of sugar declared free up to 30,000 tons and sugar exports prohibited.

Boletin Oficial year XXIV, No. 6850, November 22, 1916.

Treaty of arbitration entered into with France. Under this treaty, all disputes are to be decided by arbitration with the exception of those arising under the constitutions of the two countries. Article 2. The rules of procedure established at The Hague shall control in so far as they are not modified by this treaty. Article III. Three members compose the board, each country having the right to appoint one. In case of

dispute in regard to the appointment of the third member, a foreign power may be asked to make the appointment. Article IV. A decision is reached by a majority vote. Article VII. The treaty is to have a duration of five years from the time of its adoption, with the right of renewal.

Boletín Oficial year XXIV, No. 6879, December 28, 1916.
Executive decree. Sale of wine on Sunday prohibited. The decree further provides that all establishments dealing in that commodity shall remain closed on Sunday.

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Justicia Provincial. *Informe de la Comisión Investigadora nombrada en la sesión de 16 de Oct. de 1912 por la Cámara de*

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Colección Legislativa. *Leyes Nacionales sancionadas por el Congreso Argentino durante el periodo legislativo de 1915*. B. A., 1916.

Laws not noted in last Bulletin:

Law No. 9661 (promulgated August 28, 1915), imposes fines for violation of Law No. 5291 (the Woman and Child Labor Law) (art. 1); also imposes a fine of \$20 to \$50 on an employment agency found by the National Labor Bureau to have deceived a workman, in addition to restituting the agency fee. The agency must also return the fee when the employee, without his own fault, loses his position in three days or less. Art. 3 prohibits employment from collecting fees in advance.

Alfredo L. Palacios: *En defensa de los trabajadores, el Partido socialista argentino*. Valencia, 1916. Discusses labor laws and legislation. P. J. E.

BRAZIL.

LEGISLATION.

Although the National Congress of Brazil has been practically in continuous session since the outbreak of the European War, it has been largely engrossed with the financial embarrassments which the war entailed upon the country, and in adjusting the annual budgets of the country so as to meet the emergencies of the situation. There has been, therefore, but a small amount of legislation of a general character suitable for a review of comparative legislation.

Decree No. 11914 of January 26, 1916 (*Diario Oficial* of 29th) imposes an income tax upon official salaries and wages of nearly all public officials, including the President and Vice-President of the Republic and the Senators and Deputies in the

Congress. The rate of tax on the official salaries of the President and of Senators and Deputies is 20 per cent, and that on the salary of the Vice-President is 8 per cent; while the rate ranges from 2 per cent to 15 per cent on the salaries and compensation and pensions of other classes of public officials and employes.

Law No. 3139, of August 2, 1916 (*Diario Oficial* of 13th), is a new law for the registration of voters in federal and local elections in the federal district and the Territory of Acre. All Brazilian citizens over 21 years of age are entitled to register as voters, with the exception of: 1, illiterates; 2, beggars; 3, soldiers, with the exception of the pupils of military schools of higher grades; 4, religious members of monastic orders, companies, congregations or communities of whatever denomination, subject to vows of obedience, rule or statute, which implies the renunciation of individual liberty. This latter clause is a provision of Article 71, Section I of the Constitution of Brazil. Any citizen may be registered on any business day of the year, although his right to vote in election held within 30 days of the date of his registration is suspended with respect to such election. The application of the citizen to be registered shall be addressed to the municipal judge of the several voting districts. The application for registration must be in the personal handwriting of the applicant, and must state his age, nativity, filiation, civil status, profession and place of residence, and the handwriting and signature of the applicant must be acknowledged before a notary public of the election district. The application for registration must be accompanied (a) by proof of the majority of the applicant, consisting of certificate of baptism prior to 1890, a certificate of the civil register of births, a certificate of marriage by which the age of the applicant may appear, a certificate of past or present exercise of public office for which the age of majority is required, or other document by which this fact is necessarily implied; (b) proof of the exercise of an industry or profession or of the possession of an income sufficient for subsistence; (c) proof of residence for more than two months in the municipality, by means of a document proving the ownership of the place in which he resides, or of the payment of rent for such residence, or by the declaration of the owner or renter of

the place that the applicant lives there gratuitously, by reason of relationship, employment or favor. Without the foregoing proofs, and several others which need not be specified, no application for registration may be allowed by the judge. The judge must render his decision within eight days, which decision, stating the facts on which it is based, must be recorded by his clerk in a special book, and a certificate be issued to the applicant, which certificate, if granting the application, shall be the evidence of the citizen's right to vote, and the voter will be registered in a book provided for that purpose, and a certificate of registration will be issued to him. Other provisions of the law providing for a review of the findings of the judge, etc., need not be detailed.

Decree No. 12193, of September 6, 1916 (*Diario Oficial* of 12th), provides executive regulations for the carrying out of the provisions of the above law.

Law No. 3208, of December 27, 1916 (*Diario Oficial* of 29th), is the new election law for the election of President and Vice-President of the Republic and of Senators and Deputies in the National Congress; it is a general law applicable to the entire Republic. The election for President and Vice-President shall be held on the first day of March of the last year of the presidential term, by direct suffrage of the nation and by an absolute majority of votes, the electors voting for one name each for President and Vice-President, written on different tickets. The election for Senators and Deputies shall be held on the first Sunday of February following the close of the previous Congress, and is by direct and majority vote of the electors. All elections shall be by secret ballot. In districts where four deputies are to be elected, the voter shall vote for three names; for four, where five are to be elected, for five where six are to be elected, and for six where seven are to be elected. In general elections, or special elections where two or more deputies are to be elected to fill vacancies in a district, the elector may accumulate all or part of his votes in favor of a single candidate, in which event he will write the name of the candidate voted for as many times as the number of votes which he wishes to cast for him. If the voter writes on his ticket a greater number of votes than he is entitled to cast, those first written, up to the number he is regularly entitled to cast, will be counted, and the excess will be rejected.

The voting places in each precinct shall be designated 40 days before the first election, and shall continue to be used during the whole period of the Congress to be elected, and cannot be changed except in case of the destruction of the building, an alteration of its character, or in case of *vis major*. The electoral board for each precinct shall be composed of a local judge as President, and of several other local municipal officials. If, for any reason, on the days of election, the electoral board of any precinct fails to appear and organize, the voters of that precinct may vote in the nearest adjoining precinct, their votes being kept and counted separately from those of the regular voters of that precinct; but they can only vote after all the regular voters of that precinct have finished voting. Each voter must in person write the names of the candidates for whom he votes on separate ballots in blank furnished him. For the purposes of the election of President and Vice-President and Senators and Deputies, the entire Republic is divided by the law into specified election districts. The qualifications of candidates for the several offices are specified in the law. In the event that the candidate receiving the highest number of votes, being a majority of the total votes cast, should prove to be ineligible for election to such office, the candidate receiving the next highest number of votes, provided such number be also a majority of the total number of votes cast, shall be declared elected. Among the disqualifications of candidates for the national Congress is the fact of holding certain other offices under the federal or state government, or in the army or navy, as well as being president or director in any bank, company, corporation or enterprise which enjoys certain specified privileges or favors from the federal government, including, in case of banks, the privilege of issuing circulating notes; likewise, the relatives by consanguinity or affinity, to the second degree, of certain high officials of the several states, are ineligible to election to the Congress. The President of the Republic is ineligible to re-election, as is also the Vice-President in the event that he has exercised the office of President. Members of the President's Cabinet are also ineligible to election as President or Vice-President if they have held such cabinet office within 180 days preceding the election.

J. W.

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Publication has been commenced by the publishing firm of Jacintho Ribeiro dos Santos, Rio de Janeiro, of an extensive commentary on the new civil code, under the title of "*Manual do Código Civil Brasileiro*." The work, which is under the editorial supervision of Paulo de Lacerda, will appear in 20 volumes, each by a separate author, including some of the leading legal writers of Brazil. Advance sheets of a number of the volumes have already been published. Judging from these, the work will be very valuable to the student of jurisprudence and comparative law, but less so to the practitioner.

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CHILE.

LEGISLATION, JULY 13, 1916.

New regulation in effect for foreign companies obligating representatives and agents of same to declare in writing full particulars of the company represented and holding the agent personally responsible for payment of taxes, in case of failure on his part to comply with the regulation.

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COLOMBIA.

LEGISLATION.

- Law 21 (September 15, 1916), Diario Oficial No. 15897, September 18, amends the Packing House Law (82) of 1915. The nation guarantees 4 per cent interest during a term of four years on any investment for buildings and machinery for slaughter-houses and refrigerating plants for export of meat, established on the Atlantic or Pacific coasts, put in operation within 4 years of the law (arts. 1, 2) bacteriological laboratories are authorized; to sell vaccine, serum, etc., at cost (art. 4). A tax of \$1 for each cow slaughtered is imposed (art. 5).
- Diario Oficial No. 15907, September 29, 1916. Report on the ownership of mines by foreigners advising the presentation of a bill amending the provision of the constitution by which the rights of foreigners to own mines in Colombia is determined by the reciprocal right given to Colombians in other countries.
- Diario Oficial No. 14914, October 7, 1916. New army law.
- Diario Oficial No. 15920, October 16, 1916. Law passed doing away with the local differential taxes on national products. The right of a department to tax national products, excepting liquor brought to it from another department is repealed.
- Law 73 (December 16, 1916), Diario Oficial No. 15997, December 23, 1916, provides for a subsidy to be paid to the importer of pure breeding stock, to be used for improving breed of live stock of one-third of total cost to him, but not to exceed

\$300 for each head of cattle or horses; \$80 sheep and \$40 swine and goats. Subsidized stock cannot be sold for four years. \$50,000 is appropriated to the Department of Agriculture to import breeding stock, to be sold at auction.

Law 74 of 1916 (December 16), *Diario Oficial* No. 15997, December 23, 1916, establishes a Central Meteorological Bureau.

Law 75 of 1916 (December 16), *Diario Oficial* No. 15997, December 23, 1916, on checks. The passage of this law fills a long-felt gap in the Colombian laws, which heretofore contained no provisions on the subject. Intervention of a notary is not required for protest (art. 5). The check, if drawn in the same town, must be presented within 30 days; if in another town, 60 days; if abroad, 120 days (art. 6). If not so presented, the holder loses his rights of action against drawer or endorser, if the cover has been exhausted by fault or insolvency of the drawee; prior to that time, drawer and endorsers are liable, if check is not paid (art. 7). From two to six months imprisonment is imposed for issuing checks against non-existent funds or without authority from drawee (art. 7). "Crossing" checks, specially or generally, is authorized, limiting payment to a bank or banker (arts. 8, 9, 10).

Law 78 of 1916 (December 19), *Diario Oficial* No. 15977, December 23, 1916 amends the tariff of 1913.

Law 79 of 1916 (December 19), *Diario Oficial* No. 15977, authorizes the government to contract a loan of \$15,000,000 for public works.

Law 80 of 1916 (December 19), *Diario Oficial* No. 15977, on pensions, makes some drastic reforms. Among others, pensions are limited to \$80 a month; right to them is lost if the pensioner has an income of \$50 a month or more. All pensions cease on death.

JURISPRUDENCE

Supreme Court: (June 19, 1914), *Gaceta Judicial*, p. 181 (February 10, 1916). The judicial declaration of nullity or rescission of a contract of sale has retroactive effect, not only between the contracting parties, but also against third parties in possession of the thing unduly sold, with certain

exceptions; hence the parties are entitled to be restored to the *statu quo ante*.

Supreme Court: Maldonado *vs.* Cia. del Acueducto de Bogota (March 16, 1915). G. J., p. 373 (May 12, 1916). If the owner of an estate permits the installation of a pipe line for an aqueduct, without a prior stipulation of a price for the use of the land or a fixing of the term, he cannot claim payment from the time of installation, but only from the time of demand therefor.

Supreme Court: September 24, 1914, G. J., p. 215 (February 29, 1916). The contract by which one person gives to another the enjoyment of a farm, in consideration of the latter's obligation to pay him a third of the fruits, is not a contract of partnership properly so called, although somewhat analogous, but is a contract of lease of the kind known as *aparceria*, which does not require a public instrument; and under which the owner has a right to an accounting.

Luque *vs.* Orjuela (Supreme Court, June 26, 1914), G. J., p. 170, (January 31, 1916). The contract of sale produces rights and obligations only between the parties. In Colombian law, following the Roman law, title of ownership or dominion does not pass by the contract; delivery or "tradition" is necessary for title to pass, the contract engenders the right *ad rem*, but it is delivery or "tradition" that confers the right *in re*. In the case of realty, actual delivery is not necessary; the registering of the title suffices.

Re mine El Guabito (Supreme Court, August 22, 1914), G. J., p. 211 (February 29, 1916). Art. 4 of Law 38 of 1887 does not distinguish between abandoned lode mines and mines of new discovery and the general prohibition of denouncement, where under the old law the owner of the soil was owner of the subsoil, applies to the one as well as to the other case.

Supreme Court: July 21, 1914 (G. J., p. 188, Castillo *vs.* Jimenez (February 10, 1916). The heir does not acquire ownership or dominion of a parcel of realty of the estate except by and after adjudication thereof to him and the registration thereof.

Supreme Court: October 7, 1914 (G. J., p. 243, Uribe *vs.* Escobar, March 15, 1916). The liquidation of general mer-

cantile partnerships does not require confirmation by the court. The partition of the assets is made by the liquidator pursuant to the special provisions of the commercial code.

Supreme Court: (Resolution No. 8 of March 4, 1916). G. J., p. 293. Art. 1 of Decree 217 of 1900 on trade-marks did not give an unlimited time for use of marks registered under it. Said decree did not fix any term for the duration of the registration, and was intended to be merely provisional and procedural, hence art. 54 of law 110 of 1914, which limits the life of registration to 10 years is not unconstitutional. The registration of marks under Decrees 217 of 1900 and 475 of 1902 ceased to be effective upon law 110 of 1914 going into effect, with the exception of those registered within 10 years, as to which the law recognized their effects until the expiration of such term.

Supreme Court: August 10, 1914, G. J., February 20, 1916, p. 206. Will of *Murillo*. The code requires for the validity of a will that two witnesses be residents of the locality, but the omission in the will of a statement as to residence does not invalidate it.

Supreme Court: April 17, 1915 (*re* Zancudo Co., G. J., p. 339, April 25, 1916). The partner in a general partnership for working a mine, who enters into a private sub-association or corporation in regard to his share or interests in the main partnership, by which sub-contract the manager of the sub-association is to represent the partner's interests in the main partnership, does not thereby violate the rules of partnership, or introduce into the partnership a stranger and the contract in regard to the second corporation is not invalid.

Supreme Court: August 30, 1915 (G. J., p. 154, December 9, 1915). All matters relating to the organization of mortgage banks are within the exclusive jurisdiction of the national executive power, and consequently the departmental assemblies cannot make any decrees in regard to the formation and organization of such banking institutions within the respective departments and the court held void Ordinance No. 13 of 1913, issued by the Assembly of Santander.

Supreme Court: December 10, 1915 (*Gaceta Judicial*, January 31, 1916), p. 165. The President having vetoed a bill which

reduced pensions theretofore granted (on the ground of unconstitutionality), holding the view that such pensions were vested legal obligations and the legislature having found his objections unfounded and passed the bill over his veto, decision as to the enforceability of the law came before the Supreme Court, as provided by the constitution. The Supreme Court held the law constitutional, holding such pensions to be gratuitous recompenses or acts of grace, not constituting a vested obligation on the nation, nor constituting "civil rights" in the sense of the constitutional provision (art. 31) which guarantees "rights acquired under just title pursuant to the civil laws by natural or juristic persons." The laws granting these pensions were administrative, not civil laws; the court holding that the expression "civil laws" in said article is to be taken not in its broadest sense, but in the restricted sense, which organizes, within the field of private law, the matters specified in art. 1 of the civil code, "determining the rights of private individuals, by reason of their personal status, their property, obligations, contracts and civil actions"; it is that which relates to private interests in respect to personal status, regimen of the family and condition of property.

By Resolution No. 5 of November 3, 1915, *Gaceta Judicial*, November 30, 1915, p. 133, the Supreme Court held it had no original jurisdiction to pass on the question whether executive decrees were or were not in violation of the laws; its jurisdiction was limited to passing on the constitutionality of such decrees.

In the same resolution, the court held constitutional the power given by art. 1° of law 126 of 1914, to the President to "reorganize the national stamp tax and sealed paper revenue, with power to double the tax," but held unconstitutional certain articles of executive decree of May 22, 1915, issued to furtherance of such law, whereby power was given to government officers to examine private papers of persons and firms, inspection whereof was not authorized by pre-existing laws.

The court also held that the necessity which can induce Congress to vest the President with "extraordinary power"

under the constitution is a fact subject to the supreme appreciation of Congress alone; and the court will not impose its own views as to that necessity.

P. J. E.

COSTA RICA.

LEGISLATION.

Law No. 70, December 14, 1916. Law relative to the formation of a list of all the real estate in the Republic. The law provides for a general census of all public and private property in the Republic such as railroads, highways, etc. The owner of property must make a description thereof and enter it in the register. Such entry must be made within 10 years after the promulgation of this law.

Law No. 71, December 14, 1916. *Direct Taxation Law*. Taxes are divided into two classes, general and special. General taxes affect all the residents of the Republic, whether natives or foreigners: also all real property and business in the country, even though its proprietors or beneficiaries, whether Cost Rican or not, are non-residents. Power to increase the original tax imposed, up to 25 per cent, is given to the executive for the use of municipalities, wherein the property is situated. Any stipulation attempting to vary the incidence of a direct tax, as prescribed by law, is void.

Law No. 72, December 18, 1916. *Territorial Taxation*. Imposes a tax on all real estate, except property belonging to the state, or for educational, charitable or religious uses, public ownership. The tax is to be determined by the value of the property. A written declaration must be made annually by all real estate owners giving a description of their property and the value of same. Such declarations have the force of an oath, consequently a false declaration is considered perjury. The property is taxed according to its character and the use made thereof. The normal tax is $\frac{1}{4}$ per cent; uncultivated land, less than 100 *hectares*, is generally exempt; the tax rises with the area, tracts in excess of 5000 *hectares* paying $2\frac{1}{4}$ per cent.

Law No. 73, December 18, 1916. *Income Tax Law*. Provides for the paying of a tax by individuals and corporations on incomes derived from sources which are defined by the law.

A progressive tax is to be paid on incomes above 1200 *colones*, from 1 per cent to 5 per cent. Annual declarations of all taxable incomes must be made by the recipients thereof.

Law No. 74, December 18, 1916. Tax for public works of special interest. Provides for an increased increment tax on property which has been enhanced in value by a public improvement. The sum realized by this tax is to be used for the cost of the improvements or their maintenance.

The foregoing laws, it is understood, are likely to be repealed or amended by the new administration.

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CUBA.

LEGISLATION.

Executive Decree No. 12, January 3, 1916 (*Gaceta Oficial*, January 10), on Real Estate Registry.

Law of May 22, 1916 (*Gaceta Oficial*, May 24, 1916), amends art. 15 of the Organic Judiciary Law, as to the Judicial District of Oriente.

Law of May 23, 1916 (*Gaceta Oficial*, May 25, 1916), creates a Legation in Switzerland, to be discharged by the Minister to Holland; and a Secretary of Legation in Norway.

Workmen's Compensation Law of June 12, 1916 (*Gaceta Oficial*, June 16, 1916).

Accident is defined for the effects of this law, as every corporal injury that the workman suffers by reason of or as a consequence of labor that he is doing for account of some one else; master, the individual, company owning or contractor for, the work, exploitation or industry where the labor is done, or their legal representatives; if employing more than five workmen (art. 5). Workmen, any person who permanently or temporarily, for a fixed remuneration; carries on any work away from his residence; inspectors whose wages do not exceed \$3 (a day) and also the term of whose contract is less than 30 days; and apprentices without remuneration (art. 1).

The law applies to the following trades, occupations and industries if the master, at the time of the accident employed more than five workmen: Building and allied trades (irrespective in certain cases of the number of workmen), mining and quarrying, cartage and transportation, fishing, marine and waterworks, power, gas and electric plants and works, telegraph and telephone, production or use of explosive, inflammable or noxious articles; street cleaning, cess pools and sewerage; mechanical trades or privileges obtained pursuant to law, wherein machinery is used that is worked by power or inanimate agents; railways, tramways and public or private roads; agriculture, forestry and wholesale storage of coal, wood, building materials and inflammable substances; theatrical and other public amusements; any unrewarded apprenticeship; shipping and, in general, to any industry or work similar to those expressly enumerated (arts. 2, 38, 41). The liability of the master is presumed (art. 4); but he is not liable for an accident due to *vis major* extraneous to the work, nor for injuries incapacitating for less than two weeks (art. 8), or if he prove that the workman intentionally caused the accident (art. 9). The state is subject to the law in respect of arsenals, munition factories and any industry carried on by it. Provincial councils and municipalities are also subject thereto (art. 10). But the law is not applicable to persons in the military and naval service (art. 45).

The following indemnities are awarded (art. 11): (1) For permanent total incapacity, an income equal to two-thirds of the annual salary; (2) for permanent partial incapacity, income equal to half the loss of income; (3) for temporary incapacity, a daily compensation, including Sundays and holidays, of half the wages earned at the time of the accident, or if variable, to a third of the average wages in the preceding two months. (4) In case of death: a life income (a) to the surviving spouse, provided the marriage took place prior to the accident and the parties were living together or separation had been obtained for fault of the decedent, of 20 per cent of the victim's annual salary; upon remarriage, income ceases; (b) to dependent children, under 18 or incapacitated for work, if the mother be living, of from 30 per cent to 60 per cent of the deceased's salary, depending on the number of children; (c) to children, irrespective of age, whose

mother died prior to the accident, not to exceed 50 per cent (d, e) in certain cases, to other relatives; (f) if there be a surviving spouse entitled, the share of the children or other relatives is cut down to 3.5 or $\frac{1}{2}$ of the amount stated (art. 11). The indemnity is increased by a half, if safety appliances required by law were not used (art. 16) and is also increased, but not to exceed the annual salary, if the accident is proved to have been due to the inexcusable fault of the master or his substitutes in the management (art. 23). A technical board to study and prescribe safety appliances is created (arts. 19-22). The income cannot be assigned, encumbered or attached; any release of benefits or agreement contrary to the provisions of the law is void (art. 17). In default of punctual payment, the property of the enterprise, factory, etc., can be attached therefor, in addition to enforcing the insurance guarantees (art. 24).

The master must give notice of the accident within 24 hours, together with a medical certificate, to the municipal judge, who must notify the insurance company and the *Alcalde* (art. 25), furnish copies to the Judge of First Instance; investigate and report to him. The Judge of First Instance summons the parties. If they cannot agree, the summary proceedings of the Code of Civil Procedure for interlocutory proceedings (*incidentes*) are followed. The judgment must provide for the payment forthwith of a sum adequate for immediate necessities, which must be paid regardless of an appeal (art. 26).

The master can exempt himself from the obligations upon proof that he has duly insured (art. 33). Insurance is compulsory, except for the state, provinces and municipalities; must be complete; is for the employer's account; under no pretext can wages be withheld for premiums; any attempt to evade or elude the law, by reduction of salaries or otherwise, is criminal (arts. 35, 36, 39, 44). Insurance companies must obtain authorization from the government, furnish bond, and be subject to supervision (art. 40). Employers can be their own insurers by special authorization of the president upon due proof of solvency and ownership of real estate worth \$1000 for each workman employed; such real estate cannot thereafter be encumbered and must be kept insured (art. 50).

Foreigners, individual as well as corporate, are subject to suit and must maintain a legal representative in Cuba with power sufficient to compromise any questions relating to the indemnity and to respond for the obligations of the law; the power must be recorded in the mercantile registry (50). If the accident is due to *dolus* or negligence constituting a crime, the criminal court has jurisdiction to award the indemnities provided by the law (art. 47). If the criminal proceedings are dismissed or the defendant acquitted, recourse is had to the ordinary civil procedure, the statute of limitations (one year) running only from service of the order in the criminal suit (art. 48).

Claims for damages not within the law are subject to the common law (art. 46).

Law of June 19, 1916 (Gaceta Oficial, June 21, 1916). Law (art. 1) amending first paragraph of art. 320 of the civil code, so as to read "Majority shall begin at 21 years completed." Art. II amending art. 321. "In spite of the provisions of art. 320, daughters of full age, but less than 23, cannot leave the paternal house without authority from the father or mother with whom they live, except to contract marriage, or when the father or mother has married a second time." Art. III. Children who have reached 21 when the law goes into effect became emancipated and free from the parental power (*patria potestas*). Art. IV. The father who had voluntarily emancipated a child, reserving some right in his future property (*bienes adventicios*) shall continue to enjoy the same until such time as the child would have become free of the parental power under the old law.

Law of June 26, 1916 (Gaceta Oficial, June 28, 1916), authorizes the purchase of a plot and construction of a legation building in Washington.

Law of June 26, 1916 (Gaceta Oficial, June 28, 1916), amends art. 79 of the Organic Judiciary Law, as to judges of correction.

Decree No. 1253 (Gaceta Oficial, October 18, 1916), amending arts. 307, 308 and 366 of the General Regulations for the Mortgage Law.

Decree No. 1341 (Gaceta Oficial, October 27, 1916), amending art. 66 of the Organic Regulations governing notaries.

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ECUADOR.

LEGISLATION.

Registro Oficial No. 1109, May 27, 1916. Exportation of sugar prohibited during European War.

Registro Oficial No. 10, September 12, 1916. Labor Law. Law September 11, 1916. Limits the working day to eight hours, regardless of the nature of the employment. Employer cannot by contract deprive his employee of above right. The employee is entitled to a 25 per cent increase of his wages for overtime work done up to 6 P. M. Between 6 P. M. and 12 P. M. he is entitled to a 50 per cent increase, and after 12 P. M. he is entitled to a 100 per cent increase. Provision is also made for notice of discharge and unwillingness on part of employee to carry out the contract.

Registro Oficial No. 23, September 27, 1916. Treaty defining boundaries with Colombia ratified.

Registro Oficial No. 31, October 6, 1916. Law of September 30, 1916. Code of "Civil Procedure" amended. Stamp Law amended.

Registro Oficial No. 34, October 11, 1916. Tariff Law amended.

Registro Oficial No. 36, October 14, 1916. Treaty of exchange of publications between Colombia and Ecuador ratified.

Registro Oficial No. 37, October 16, 1916. Exportation of silver prohibited.

Registro Oficial No. 49, October 30, 1916. Contains the Tariff Law. P. J. E.

HONDURAS.

LEGISLATION.

Among the laws enacted by the National Congress of Honduras during the year 1916 were the following:

Decree No. 24, January 27, 1916. Insurance law amendment:

When a fire occurs in property which is insured, the owner of the building or establishment is presumed to be the cause of the fire until the contrary is proven. The judges shall have the right to imprison such persons against whom the presumption exists.

Decree No. 58, February 2, 1916. Extensive amendments to the mining laws.

Decree No. 66, February 21, 1916. Amendment to banking laws.
Decree No. 108. The payment of wages of laborers must be made in coin of the country and not in checks, coupons, scrip or other paper representing value, and also not in merchandise, under penalty of a fine of from \$25 to \$100. L. C. Q.

MEXICO.

On February 5, 1917, the 60th anniversary of the Mexican Constitution of February 5, 1857, the Mexican United States promulgated a new federal constitution. The Constituent Congress, or Constitutional Convention, convened in the city of Querétaro, the provisional capital of the Republic, early in December, 1916. Instead of its proceeding to draft a constitution according to its own lights, the first chief of the revolution, General Venustiano Carranza, was pleased to submit to the convention, upon its organization, a complete draft of the proposed constitution, in 132 articles, with directions to the convention to discuss, adopt, or alter the same within a term not to extend beyond February 5, the date on which the new constitution must be promulgated. It must be said, however, that the convention made very extensive and radical alterations in the project, so that its distinguished author would never recognize the finished product as his original handiwork in its principal radical features.

It is safe to say that the new constitution, as adopted and promulgated by the convention, is the most radical and revolutionary body of laws that has ever been enacted and put into operation in the history of human government, as will abundantly appear from the following review of its principal provisions. Its chief features are "Mexico for the Mexicans" as against the world, the total subjection of the church to the state, and the most radical and far-reaching program of agrarian and labor legislation. All this is on paper, and it is another question to what extent it may be able to be put into practical or effective execution. In an editorial article in "El Universal," of December 9, 1916, which publishes the presidential project, are the following pertinent remarks upon the constitution of 1857: "We have a constitution technically perfect, and that constitution has not served to govern us. At the end of 50 years of constitutional fetishism, we have just discovered this little objection, and set

ourselves to correct the errors of our forebears. During a half century, we have adopted a perfect constitution, and, nevertheless, it was impossible for us to govern ourselves." To what extent this experience of the past may be reproduced in the future, remains for future experience to determine.

Before entering upon a review of the new revolutionary constitution and of some of the decretal legislation of the revolutionary government, it may be of interest to notice some of the salient features of the revolutionary program under the leadership of General Carranza, as they throw much light upon the constitutional and legal principles and concepts of the revolution.

On February 18, 1913, General Victoriano Huerta, having executed his famous, or infamous, *coup d'etat* against President Madero, addressed the following telegraphic and laconic message to the governors of the several Mexican states: "Authorized by the Senate, I have assumed the executive power, the President and his Cabinet being prisoners." On the next day, at the instance of General Carranza, who was Governor of the State of Coahuila, the Congress of the state passed a decree declaring "We repudiate General Victoriano Huerta in his character as chief of the executive power of the Republic, which he says was conferred upon him by the Senate, and we repudiate also all acts and dispositions which he may proclaim in such character. Extraordinary powers are granted to the executive of the state in all branches of the public administration, that he may suppress those which he deems advisable and proceed to arm forces to aid in sustaining the constitutional order in the Republic"; the decree also called upon the governments of all the other states and upon the armed forces of the country to rally to the support of the Coahuila Government.

Afterwards, on March 26, 1913, a number of officers of the army met and drew up, signed and proclaimed a revolutionary program, called the "Plan of Guadalupe," directed against the usurpative administration of General Huerta. In this plan Governor Carranza was proclaimed as "First Chief of the Constitutionalist Army," and he was invested *ad interim* with the executive powers of the government.

The first chief thereupon proceeded to organize the Constitutionalist Army and provisional government, and to dictate many

decrees of a legislative character, a number of them effecting amendments to the federal constitution and to the civil and penal codes of the Republic, including amendments authorizing for the first time in the history of the Republic, absolute divorce from the bonds of matrimony. Other decrees provided for raising revenue by tariff and internal taxes, and authorized and put into circulation many millions of pesos of inconvertible "fiat" paper money, the circulation of which was enforced by drastic penalties, and proved the source of many troubles to the country.

Under date of December 12, 1914, the first chief promulated a decree in which, at great length of detail, he assumed to himself the totality of executive and legislative powers of the provisional government, including authority to amend the constitution, the civil, penal and commercial codes, the free appointment and removal of governors of states and all civil and military officers, and in general, "to issue and put into force, during the struggle, all laws, dispositions and measures, designed to satisfy the economic, social and political necessities of the country, and all other laws which may be deemed necessary to secure to all the inhabitants of the country the effectiveness and the full enjoyment of their rights and equality before the law."

Under this authority, the first chief decreed on December 29, 1914, an amendment of the federal constitution authorizing absolute divorce, and providing, "the bonds of matrimony may be dissolved, either by the mutual and free consent of the parties thereto, when the marriage shall have existed for three years, or at any time for causes which make impossible or improper the realization of the ends of the marriage, or for grave defaults of either of the parties which render the martial disagreement irreparable. Upon the dissolution of the marriage, the parties may contract a new legitimate union."

Other decrees of the first chief provided an elaborate system of agrarian and labor reforms, decreeing the expropriation and subdivision of large landed estates (*latifundios*), the substance of which, being embodied in the new constitution, will be examined at its proper place below.

THE CONSTITUTION OF 1917.

The new constitution consists of 136 articles, plus 16 transitory articles (making an octavo pamphlet of 48 pages), the latter of which provide for the going into effect of the new constitution. These provide that the new constitution is to go into effect on the first day of May, 1917, with the exception of the provisions relative to the election of the supreme federal and state powers, which become immediately effective, to the end that such elections may be held. Art. 6 of the "Plan of Guadalupe" provides that the first chief of the revolution, entrusted with the executive power of the nation, shall, as *ad interim* President of the Republic, immediately, upon the re-establishment of peace, call general elections for President, etc., "and shall deliver up his powers to the citizen who shall be elected." In the decree of December 12, 1914, in which the first chief assumed full dictatorial powers, he recites his proposition "to retire from power immediately upon the establishment of a government capable of carrying out the political and social reforms which the country demands." Art. 82, Sec. V, of the new constitution, prescribing the qualifications of the President, provides that no one shall be elected President who in the event of belonging to the army, shall have been in active service 90 days before the day of election. As General Carranza is a general of the army in active service, and would be disqualified as a candidate for President by this provision of the constitution, a saving clause is contained in the "Transitory Articles" to the effect that in the ensuing presidential elections, the prohibition of art. 82, sec. V shall not apply. So the first chief is the chief candidate for Constitutional President of the reorganized Republic. By art. 9 of the "Transitory Articles," he is himself expressly empowered to "issue the electoral law, according to which, for this time, the elections to choose the powers of the union are to be held." The purpose and effect of such a project, if in the United States, would be apparent; it may be otherwise in Mexico.

Art. 14 of the Bill of Rights of the new constitution expressly provides: "No law shall be given retroactive effect to the prejudice of any person. No one shall be deprived of life, liberty, or of his property, possessions or rights, except by legal proceedings conducted before tribunals previously established, in

which the essential formalities of procedure are observed, and according to laws enacted with priority to the fact." Nevertheless, art. 15 of the "Transitory Articles" works an exception, declaring that "the citizen entrusted with the executive power of the union is empowered to issue the law of civil responsibility (damages) applicable to the authors, accomplices and concealors of the crimes committed against constitutional order in the month of February, 1913 (epoch of the Huerta *coup*), and against the Constitutionalist Government." As there are no previously established tribunals, and the law is confessedly not yet framed, some captious critic might suggest that this special provision smacks of "*ex post facto*," if not of pre-judgment and punishment, with one citizen in the triple rôle of accuser, judge and executioner.

Although the National Congress does not begin its regular functions until September 1, 1917; it is to hold extraordinary sessions on April 15, in the capacity of an electoral college, to compute the votes and announce the result of the election for President, as well as to enact laws organizing the judiciary of the nation. The 11 Ministers of the Supreme Court of Justice are to be elected by the national congress, at first for a term of two years, then for four years, when, after 1923, they shall be irremovable "except for bad conduct," to be determined by judgment of responsibility. It is provided in art. 11, with ample simple faith, that "While the Congress of the union and those of the states legislate upon the agrarian and labor problems, the bases established by this constitution for said laws shall be put into force throughout the Republic." What those "bases" are we will soon come to see.

The President does not enter upon his term until December 1, 1917, for a term of four years, "and can never be re-elected." In the meanwhile the first chief holds on as Provisional President.

The earliest and most persistent concern of the new constitution, in its bill of rights and scattered throughout its ample text, is the total subjection to law of its ancient and mortal enemy, the ecclesiastical establishment. In art. 3 learning is declared free, "but that given in official establishments of education, as well as that given in private establishments, shall be laical. No religious corporation nor minister of any cult can estab-

lish or direct schools of primary education. Private primary schools can only be established by subjecting themselves to official supervision."

"Art. 5, sec. 2. The state cannot permit to be carried into effect any contract, pact or agreement having for its object the diminution, the loss or the irrevocable sacrifice of the liberty of man, whether by reason of labor, or education, or of religious vows. The law, consequently, does not permit the establishment of monastic orders, whatever may be the denomination or object for which they pretend to be instituted."

"Art. 24. Every man is free to profess the religious belief which he prefers, and to practice its ceremonies, devotions, or acts of worship, within its temples or in his private residence, provided that they do not constitute a crime or misdemeanor punishable by law. Every religious act of public worship must be performed strictly within the temples, which shall always be under the supervision of the authorities."

"Art. 27, sec. II. Religious associations denominated churches, whatever may be their creed, shall in no case have the capacity to acquire, possess or administer real property, nor capital secured upon the same; those which they at present hold, either directly or through a third person, shall become the property of the nation, a popular action being granted to anyone to denounce all such property. Proof of presumptions shall be sufficient to sustain such denouncement. All temples destined to public worship are the property of the nation represented by the federal government, which shall determine those which may continue to be used for such purpose. All bishoprics, parsonages for priests (*casas curales*), seminaries, asylums or colleges of religious associations, convents, or any other edifice constructed or destined to the administration, propaganda or teaching of a religious cult, shall pass at once, by force of law (*de pleno derecho*), to the direct ownership of the nation, to be destined exclusively to the public service of the federation or of the states, in their respective jurisdictions. All temples which may hereafter be erected for public worship shall be the property of the nation."

"Sec. III. Institutions of beneficence, public or private, having for their object the assistance of the needy, scientific investigation, the diffusion of learning, the reciprocal aid of their associates, or any other lawful object, shall not acquire, hold or administer capital secured upon real property, wherever the period of such imposition of capital exceeds 10 years. In no case shall institutions of this character be under the patronage, direction, charge or supervision of religious corporations or institutions, nor of the ministers of any cult, or of anyone related

to or connected with them, although they may not be in the active exercise of their office or function."

"Art. 130. The federal powers are invested with authority to exercise the intervention which the laws may provide in matters of religious worship and external discipline. The other authorities shall act as auxiliaries of the federation. The Congress cannot enact laws establishing or prohibiting any religion whatever. Marriage is a civil contract. This and other acts of the civil status of persons are of the exclusive jurisdiction of the officials and authorities of the civil order. The religious oath is abolished (since the constitution of 1857), and the simple promise to speak the truth, and to perform the obligations which are contracted, subjects the person making it, in the event that he should fail to observe it, to the penalties provided by law for such cases. The law does not recognize any (juridical) personality in the religious associations denominated churches. The ministers of worship shall be considered as persons who exercise a profession, and they shall be directly subject to the laws provided in such matters. The legislatures of the states alone shall have the power to determine, according to local needs, the maximum number of the ministers of worship. The minister of any cult, in order to exercise his profession in Mexico, must be a Mexican by birth. The ministers of worship can never, in public meeting or in private association, or in acts of worship or of religious propaganda, criticize the fundamental laws of the country, the authorities in particular, or the government in general; they shall have neither active nor passive suffrage nor the right to associate together for political purposes.

"In order to dedicate new places of worship open to the public, the permission of the Department of Gobernación is necessary, upon report first had from the government of the state. There must be in every temple a public official (*encargado*), responsible to the authorities for the compliance with the laws in regard to religious discipline, in said temple, and of the objects pertaining to the worship. The official of each temple, together with 10 neighbors of the place, shall immediately advise the municipal authority of the name of the person who is in charge of the said temple. Notice of every change shall be given by the outgoing minister, accompanied by the incoming one and 10 neighbors. The municipal authority, under penalty of removal from office and a fine up to 1000 pesos in each case, shall take care for the performance of this provision; under the same penalty, he shall keep a book for the registry of the temples and another for that of the officials in charge. The municipal authority shall give notice of every permit to open to the public a new temple, or of the change of the official in charge, to the Department of Gober-

nación, through the governor of the state. In the interior of the temples, gifts of personal property may be collected.

"Periodical publications of a confessional character, either by reason of their program, of their title, or simply of their ordinary tendencies, shall not comment upon national political matters, not publish information respecting the acts of the authorities of the country, nor of private persons, which are directly related to the conduct of public institutions.

"The formation of every kind of political parties, the title of which contains any word or suggestion whatever referring to any religious confession, is strictly prohibited. Meetings of a political character cannot be held in temples.

"No minister of any cult can inherit, either himself or through any intervening third person, any real property occupied by any association for religious propaganda, or for religious purposes or for beneficence. Ministers of any worship are legally incapable of being the heirs, by last will, or ministers of the same worship, or of a private person to whom they may be related within the fourth degree.

"The real and personal property of the clergy or of religious associations, shall be governed, with respect to its acquisition, by the provisions of art. 27 of this constitution.

"Prosecutions for the violation of the preceding provisions shall never be tried by jury."

Art. 27 of the constitution, above referred to, is a sweeping nationalization of the landed property and natural resources of the Republic, and initiates the radical new principal of "Mexico for the Mexicans." In substance, art. 27 provides:

"The ownership of the lands and waters embraced within the limits of the national territory, corresponds primarily to the nation, which has had and has the right of transferring the title to the same to private persons, constituting private property. The latter shall not be expropriated except by reason of public utility and upon indemnization. The nation shall at all times have the right to impose upon private property the conditions (*modalidades*) which the public interest may require, as well as to regulate the use of natural resources susceptible of appropriation, in order to make an equitable distribution of the public wealth and to provide for its conservation. To this end the necessary measures shall be adopted for the subdivision of large landed estates (*latifundios*); for the development of small properties; for the creation of new centers of agricultural population, with the lands and waters necessary to them; for the encouragement of agriculture, and to avert the destruction of natural resources and the injuries which property may suffer to the prejudice of society. Towns, hamlets (*rancherías*) and com-

munities which do not possess lands and waters, or do not have them in sufficient quantity for the needs of their population, shall have the right to be provided with them, by taking them from the neighboring properties, but respecting always small properties. Therefore the donations of lands which have been made up to the present time in accordance with the decree of January 6, 1915, are confirmed. The acquisition of private properties necessary to secure the objects aforesaid, shall be considered as of public utility.

"The direct ownership of all minerals and substances which, in veins, layers, masses or beds, constitute deposits the nature of which is distinct from the components of the soil, etc., belongs to the nation. As does also that of the waters of the territorial seas within the limits fixed by international law. In the case of the minerals and waters above referred to, the dominion of the nation is inalienable and imprescriptible, and concessions of the same can only be made by the federal government to individuals, or civil or commercial societies organized in accordance with the Mexican laws, upon the condition that they undertake regular works for the exploitation of the resources referred to, and comply with the requirements which the laws may provide.

"The capacity to acquire the ownership of the lands and waters of the nation shall be governed by the following requirements:

"1. Only Mexicans by birth or by naturalization, and Mexican companies, have the right to acquire the ownership of lands, waters, and their appurtenances, or to obtain concessions for the exploitation of mines, waters, or combustible minerals in the Mexican Republic. The state may grant the same right to foreigners, provided that they shall agree, before the Department of Foreign Relations, to consider themselves as nationals with respect to said properties, and to not invoke, therefore, the protection of their governments with respect thereto; under the penalty, in the event of the violation of their agreement, of losing, to the profit of the nation, the properties which they may have acquired by virtue of such agreement. On no account shall foreigners be enabled to acquire the direct ownership of lands or waters within a zone of 100 kilometers in breadth along the frontiers and of 50 kilometers along the seashore.

"IV. Commercial stock companies cannot acquire, possess or administer rural estates.

"VII, sec. II. The laws of the federation and of the states, in their respective jurisdictions, shall determine the cases in which the taking of private property shall be of public utility; and in accordance with said laws, the administrative authority will make declaration to that effect. The price which shall be

fixed as indemnity for the property expropriated shall be based upon the amount which appears as the assessed valuation (*valor fiscal*) of the same in the tax assessment and collection offices, whether this valuation has been declared by the owner, or simply accepted tacitly by him by having paid his taxes upon that basis, increasing the same by 10 per cent. The excess of value which such private property may have on account of improvements made thereon subsequently to the date of the designation of the fiscal value, shall be the only amount which is subject to expert proof and judicial determination. The latter rule will be observed with respect to objects, the value of which is not fixed in the taxing offices.

"All proceedings, dispositions, resolutions and operations of surveying, concession, composition, judgment, compromise, alienation, or judicial sale, which may have wholly or partly deprived of their lands, woods and waters, the tenants in common, hamlets, towns, congregations, tribes and other bodies of population, which yet exist since the law of June 25, 1856, are declared void; as likewise shall be all dispositions, resolutions and operations hereafter which produce similar effects. Consequently, all lands, woods and waters of which such bodies may have been deprived, shall be restored to them in accordance with the decree of January 6, 1915, which shall continue in force as a constitutional law

"During their next constitutional terms, the Congress of the union and the legislatures of the states, within their respective jurisdictions, shall enact laws to carry out the subdivision of the large landed estates, in accordance with the following bases: (a) In each state and territory shall be established the maximum area of land of which a single individual or legally constituted corporation can be the owner. (b) The excess of land beyond the area so fixed shall be subdivided by the owner within the time which the local laws may allow, and the subdivided tracts shall be placed on sale upon the conditions which the governments may approve in accordance with said laws. (c) If the owner should refuse to make the subdivision, this shall be carried into effect by the local government by means of expropriation. (d) The value of the subdivided tracts shall be paid by annual installments which shall extinguish the principal and interest within a period of not less than 20 years, during which the purchaser cannot alienate his tract. The rate of interest shall not exceed 5 per cent per annum. (e) The owner shall be obliged to receive bonds of a special debt created in order to guarantee payment for the property expropriated. For this purpose the Congress of the union shall enact a law empowering the states to create their agrarian debt. (f) The local laws shall establish a family homestead, and determine the property which shall constitute it, upon

the basis that the same shall be inalienable, and shall not be subject to attachment or encumbrance. All contracts and concessions made by previous governments, since the year 1876, which have had the effect of monopolizing the lands, waters and natural riches of the nation, by a single person or company, are declared subject to revision, and the executive of the union is empowered to declare them void when they involve serious prejudice to the public interest.

"Art. 28. In the Mexican United States there shall be no monopolies or forestalling of any kind, nor exemptions from taxation. . . . Consequently, the law shall punish severely, and the authorities shall diligently prosecute, every concentration or cornering in one or a few hands, of articles of necessary consumption, which have for their purpose to secure a rise of prices; every act or procedure that prevents or tends to prevent free competition in production, industry or commerce or in services to the public; every agreement or combination, in whatever manner it may be made, of producers, manufacturers, merchants and transportation enterprises, or of any other service, in order to prevent competition among themselves and oblige the consumers to pay exaggerated prices; and, in general, everything which may constitute an undue exclusive advantage in favor of one or more specified persons, and to the prejudice of the public in general or of any social class. Associations of workmen formed in order to protect their own interests, do not constitute monopolies.

"Art. 123. Of Labor and Social Provision. The Congress of the union and the legislatures of the states shall enact laws concerning labor, founded upon the necessities of each region, without contravening the following bases, which shall govern the work of laborers, daily wage earners, employes, domestics and artisans, and generally every contract of labor:

"1. The duration of a day's work shall be eight hours.

"2. The maximum period of night work shall be seven hours. Unhealthful or dangerous work for women in general and for minors under 16 years of age is prohibited. Both such women and minors are prohibited from doing industrial night work; and in commercial establishments they cannot work after 10 o'clock at night.

"3. Minors over 12 years of age and under 16 years, shall have a maximum day's work of six hours. The labor of children under 12 years of age cannot be the object of contract.

"4. For every six days of work, the operative shall have at least one day of rest.

"5. Women, during the three months prior to childbirth shall not undertake physical labors which require a considerable material effort. In the month following confinement, they shall

necessarily enjoy rest, and they shall receive their entire salary and retain their employment and the rights which they may have acquired under their contract. During the period of lactation or nursing, they shall have two extraordinary periods of rest each day, of a half-hour each, in order to nurse their children.

"6. The minimum wage which the laborer shall receive, shall be such sum as may be considered sufficient, having regard to the conditions of each region, to satisfy the normal necessities of the life of the laborer, his education, and his honest pleasures, considering him as the head of a family. In every agricultural, commercial, manufacturing or mining enterprise, the laborers shall have the right to participate in the profits, which right shall be regulated as indicated in sec. 9.

"7. For equal work, there must be paid an equal wage, without respect to sex or nationality.

"8. The minimum wage shall be exempt from attachment, set-off or discount.

"9. The fixing of the rate of minimum wage, and of the participation in the profits referred to in sec. 6, shall be made by special commissions which shall be formed in each municipality, subordinated to the central Board of Conciliation which shall be established in each state.

"10. Wages must be paid precisely in lawful money, it being prohibited to make payment in merchandise, or by duebills, tokens or any other representative sign used as a substitute for money.

"11. When on account of extraordinary circumstances, the hours of a day's work must be increased, the wage paid for the excess time shall be 100 per cent more than that fixed for normal hours. In no case shall the extraordinary labor exceed three hours daily nor three consecutive days. Males under 16 years of age and women of whatever age shall not be permitted to do this kind of work.

"12. In every agricultural, industrial and mining enterprise, or in any other kind of labor, the employers shall be bound to provide the workingmen with comfortable and hygienic habitations, for which they shall not collect rent exceeding one-half of 1 per cent monthly of the assessed tax value of the properties. Likewise, they shall establish schools, hospitals and other services necessary to the community. If such business enterprises are located within towns and employ more than 100 workingmen, they shall be under the first of the obligations mentioned.

"13. Moreover in these said centers of work, when their population exceeds 200 inhabitants, a tract of land, which shall not be less than 5000 square meters, shall be reserved for the establishment of public markets, the erection of buildings destined to municipal services, and recreative centers. In every center of

labor, the establishment of shops for the sale of intoxicating drinks, and games of chance, are prohibited.

"14. The employers shall be responsible for the accidents of labor and for the professional illnesses of their workers, incurred by reason of or in the exercise of the profession or labor in which they are engaged; therefore, the employers shall pay the prescribed indemnity, in accordance with whether death or simply temporary or permanent incapacity to work has resulted, in accordance with the provisions which the laws may establish. This responsibility shall exist even in the event that the employer may have contracted for the labor through a third person.

"15. In the installation of their establishments, employers shall be obliged to observe the legal requirements with respect to hygiene and healthfulness, and to adopt measures adequate to prevent accidents in the use of the machines, instruments and materials of labor, as well as to organize their plants in such manner that the greatest security for the health and life of the workmen compatible with the nature of the business, shall be secured, under the penalties which the laws may provide for such cases.

"16. Both the laborers and the employers shall have the right to unite in defense of their respective interests by forming unions, professional associations, etc.

"17. The laws shall recognize strikes and shut-downs (*paros*) as a right of the laborers and of the employers.

"18. Strikes shall be lawful when they have for object to secure the equilibrium between the several factors of production, harmonizing the rights of labor with those of capital. In all public services it shall be obligatory upon the workmen to give notice, 10 days in advance, to the Board of Conciliation and Arbitration, of the date fixed for the suspension of work. Strikes shall be considered as illegal only when the majority of the strikers commit violent acts against persons or property, or in case of war, when the laborers belong to establishments and services dependent upon the government. Laborers in the military manufacturing establishments of the government of the Republic, shall not be embraced within the provisions of this section, as they are assimilated to the national army.

"19. Shut-downs shall be lawful only when excess of production makes it necessary to suspend work in order to maintain prices within a paying limit, and with the previous approval of the Board of Conciliation and Arbitration.

"20. Differences or conflicts between capital and labor shall be subject to the decision of a Board of Conciliation and Arbitration, formed by an equal number of representatives of the workmen and of the employers, and one representative of the government.

"21. If the employer shall refuse to submit his differences to arbitration, or to accept the award rendered by the board, the contract of labor shall be taken as terminated and he shall be obliged to indemnify the laborer in the amount of three months' wages, besides the responsibility which he may incur by the conflict. If the refusal should be on the part of the workman, the contract of labor will be considered as terminated.

"22. The employer who discharges workmen without just cause, or on account of having joined an association or union, or on account of having taken part in a lawful strike, shall be obliged, at the election of the workman, to carry out the labor or to indemnify him in the amount of three months' wages. He shall likewise be under this obligation when the workman shall leave the service on account of the want of probity on the part of the employer, or by reason of having received bad treatment, either in his own person or in that of his spouse, parents, children or brothers and sisters. The employer cannot relieve himself of this liability when the ill treatment proceeds from his clerks or dependents who act with his consent or tolerance.

"23. Debts in favor of laborers for wages or salary accrued within the last year, and on account of indemnities, shall have preference over all other debts in cases of failure or bankruptcy.

"24. The laborer alone shall be responsible for debts contracted by laborers to their employers, their associates, families or dependents, and in no case and on no account shall the same be required of the members of their families, nor shall such debts be recoverable for the amount of the laborer's wage in one month (*sic*).

"25. The service of securing employment for laborers shall be without cost to them, whether the same is performed by municipal offices, employment agencies, or any other official or private institution.

"26. Every contract of labor entered into between a Mexican and a foreign employe must be legalized by the proper municipal authority and *viséed* by the consul of the nation to which the laborer is to go, provided that in addition to the ordinary clauses they shall clearly specify that the expenses of repatriation shall be assumed by the contracting employer.

"27. The following conditions shall be void and shall not obligate the contracting parties, although they may be expressed in the contract: (a) Those which stipulate a day's labor which is inhuman on account of being notoriously excessive considering the nature of the work. (b) Those which fix a wage which is not remunerative in the judgment of the Boards of Conciliation and Arbitration. (c) Those which provide a period longer than one week for the payment of the wages. (d) Those which indicate a place of amusement, inn, café, tavern, saloon or shop where the

wage is to be paid, unless in case of employes of such establishments. (e) Those which involve a direct or indirect obligation to acquire articles of consumption in specified shops or places. (f) Those which permit the retention of wages under the guise of a fine. (g) Those which involve a waiver on the part of the workman of the indemnities to which he may be entitled on account of accidents of labor, professional illness, damages caused by the non-performance of the contract or by his being dismissed from the work. (h) All other stipulations which imply waiver of any right consecrated in favor of the workman by the laws for the protection and assistance of workmen."

The foregoing are the principal distinctive features of the new constitution. In other respects it is a normal and conservative document based on the model of North American constitutions, federal and state. It may be noted that the new constitution adds a new state to the previous 27, the former territory of Tepic, on the Pacific coast, being erected in the state of Nayarit, this name being that of this region previous to the Spanish conquest. It is provided that in the event that the federal powers shall remove to another place, the present federal district shall be erected into a state known as Valle de Mexico, or the state of the Valley of Mexico.

Referring to the provisions of the new constitution which impose serious restrictions and limitations upon foreigners doing business in the country, such as art. 27 prohibiting foreigners or foreign corporations from acquiring the ownership of lands, waters and their appurtenances, and from obtaining concessions for the exploitation of mines, waters or combustible minerals in the Mexican Republic, unless, in the latter event, they assume the condition of Mexicans with respect to such properties and agree not to invoke the protection of their governments in respect to the same; and the several requirements of art. 123, fixing minimum wages, and equality of wages without respect to sex or nationality and the other provisions with respect to liability for accidents of labor and the elaborate arrangements for the comfort and convenience of workingmen, it may be remarked that inasmuch as practically the totality of business enterprise on a large scale, agricultural, industrial, manufacturing and mining in the Republic is foreign enterprise, such requirements may tend to defeat their own purpose and result in anything else but the improvement of the condition of the laboring classes in Mexico,

and largely discourage the development of the industries and resources of the country.

SOME CONSTITUTIONALIST DECREES.

A decree of the first chief, of March 22, 1915, reciting in its preamble that according to the federal constitution "no one can be required to render personal services without his full consent and with just compensation," orders an increase of 35 per cent in the daily wages paid laborers in the principal manufacturing establishments of the country, and of 40 per cent of the amount paid, for piece work in such establishments.

A decree of September 15, 1916, had commanded the acceptance by creditors, at par, of the depreciated and almost totally valueless paper money with which the country has been swamped for several years, and provided that in the event that the creditor should refuse to accept the offer of payment in such worthless paper money, the debtor should have the right to deposit the amount in court to the account of the creditor, and such tender should be considered as a full payment and discharge of the debt. The operation of this easy method of discharging honest debts in a dishonest way came personally under the observation of the writer. In December of last year he was sent to Mexico City to try to adjust a case in which an American had loaned some \$25,000 in good money to a French business house in Mexico, and the latter had made a deposit of an equal amount in worthless paper. Notwithstanding the penalties for contumacy provided by the decree, the writer rejected the paper deposit. Practically the only business being done in the courts at that time was these tenders of payment, and divorce cases under the new divorce law, and the newspapers were full of legal advertisements notifying creditors of such deposits made by their debtors, one which the writer noticed being for nearly \$600,000.

The opposition to this high-handed practice was so general that while the writer was in Mexico City, a new decree, dated December 14, 1916, was published, repealing the decree of September 15, or rather suspending its operation "until, upon the re-establishment of constitutional government in the Republic, the public powers shall enact general laws or regulations, applicable to contracts, obligations and payments of money which were

the subject of that law." It was further decreed that, "during the suspension, all creditors and debtors shall enjoy a general moratorium during which they shall not be obliged to make or receive payments of money against their will." J. W.

NICARAGUA.

DRUG LAW.

According to press reports the authorities in Managua have ruled that the drug law, in so far as it applies to patent medicines and harmless nostrums, is inoperative on the Atlantic coast. The compounding of drugs and the sale of medicines, pills, or tablets, except in original packages, is, it is understood, prohibited.

MERCHANDISE COUPONS ILLEGAL.

The Chamber of Deputies has recently promulgated a law making the issuance of merchandise coupons illegal. Laborers are not to receive in payment of their services coupons or other equivalents for money of legal currency.

CRUDE OIL.

On January 29 last the Chamber of Deputies passed a bill providing for the free introduction of crude oil, for a period of two years, for disinfecting and street sprinkling purposes.

CRUDE PETROLEUM.

The Gaceta Oficial (Official Gazette) publishes in its edition of February 16, 1916, a decree permitting, on and after that date, the introduction of crude petroleum into the Republic free from the payment of general and local duties and imposts for a period of two years, with the exception of storage, portorage and wharfage charges.

IMMIGRATION BILL.

The government has submitted to Congress an immigration bill which provides that every foreigner who desires to enter the country shall be possessed of at least 50 cordobas (cordoba = \$1), regardless of whether he comes as an immigrant, on business, in transit, or for any other cause. The laws of Nicaragua prohibit the entry of Chinese into the Republic. This bill forbids

admittance to Arabs, Turks, Syrians, Armenians and gypsies of any nationality, but does not apply to persons of these races already permanently established in the country who leave Nicaragua and return, provided they secure the necessary passports. Foreigners who are either deaf, dumb, blind, idiotic, insane, or who are afflicted with leprosy, yellow fever, or any contagious disease will be refused admittance into the Republic, but an exception will be made in the case of idiots, imbeciles, the blind, deaf and dumb who can show that they have a sufficient competence to live upon without becoming a public charge. Immigrants who enter the country as such must be in good physical condition. The entry of persons who have been convicted of crime, or escaped criminals, is barred. The authorities of the different ports are required not to permit the temporary landing of passengers who are not entitled to entry under any of the restrictions mentioned in the foregoing. Travelers in transit may pass through the Republic provided they comply with the provisions of the law.

CANAL TREATY WITH THE UNITED STATES.

The convention between Nicaragua and the United States regarding the Nicaraguan canal route and a naval base on the Gulf of Fonseca, was signed at Washington, August 5, 1914, and ratifications were exchanged June 23, 1916.

This convention provides "for the possible construction of an inter-oceanic ship canal"

Art. 1 provides that "The government of Nicaragua grants in perpetuity to the government of the United States, forever free from all taxation or other public charge, the exclusive proprietary rights necessary and convenient for the construction, operation and maintenance of an inter-oceanic canal by way of the San Juan River and the great Lake of Nicaragua or by way of any route over Nicaraguan territory, the details of the terms upon which such canal shall be constructed, operated and maintained to be agreed to by the two governments whenever the government of the United States shall notify the government of Nicaragua of its desire or intention to construct such canal."

Art. 2 provides "To enable the government of the United States to protect the Panama Canal and the proprietary rights granted to the government of the United States by the foregoing

article, and also to enable the government of the United States to take any measure necessary to the ends contemplated herein, the government of Nicaragua hereby leases for a term of 99 years to the government of the United States the islands in the Caribbean Sea known as Great Corn Island and Little Corn Island; and the government of Nicaragua further grants to the government of the United States for a like period of 99 years the right to establish, operate and maintain a naval base at such place on the territory of Nicaragua bordering upon the Gulf of Fonseca as the government of the United States may select. The government of the United States shall have the option of renewing for a further term of 99 years the above leases and grants upon the expiration of their respective terms, it being expressly agreed that the territory hereby leased and the naval base which may be maintained under the grant aforesaid shall be subject exclusively to the laws and sovereign authority of the United States during the terms of such lease and grant and of any renewal or renewals thereof."

Art. 3 provides "In consideration of the foregoing stipulations and for the purposes contemplated by this convention and for the purpose of reducing the present indebtedness of Nicaragua, the government of the United States shall, upon the date of the exchange of ratification of this convention, pay for the benefit of the Republic of Nicaragua the sum of \$3,000,000 United States gold coin, of the present weight and fineness, to be deposited to the order of the government of Nicaragua in such bank or banks or with such banking corporation as the government of the United States may determine, to be applied by Nicaragua upon its indebtedness or other public purposes for the advancement of the welfare of Nicaragua in a manner to be determined by the two high contracting parties, all such disbursements to be made by orders drawn by the Minister of Finance of the Republic of Nicaragua and approved by the Secretary of State of the United States or by such other person as he may designate."

This treaty has caused objection and protest to be made to the United States by the governments of Colombia, Costa Rica and Salvador. They contend that Nicaragua is selling rights to which she is not entitled, and that Nicaragua is bound to consult Costa Rica in such a treaty and that she failed to do so. Costa Rica and

Salvador brought suit against Nicaragua before the Central American Court of Justice which decided in favor of their contentions. But the United States has maintained that it only secured an option to build a canal and has provided in the treaty for the protection of such rights as Salvador and Costa Rica may have.

ELECTION LAW.

Congress passed an act reforming the law of election.

TARIFF LAW.

Congress passed a new tariff law.

CODE OF COMMERCE.

A new code of commerce was approved and promulgated.

AGRARIAN LAW.

A new agrarian law was passed fixing a new value on public lands and providing for easy and secure methods of securing lands.

DIVORCE.

The civil laws in regard to divorce were changed.

FINANCE.

There is now contemplated the organization of the finance of the Republic with the consolidation of the nation's debt and the issuance of customs bonds.

W. S. P.

PANAMA.

POSTAL CONVENTION WITH ARGENTINA.

The secretary of foreign relations and the consul general of Argentina in Panama signed, on January 11 last, a postal convention providing among other things, for the establishment at an early date of a parcel post service between the two countries.

ARBITRATION CONVENTION WITH THE UNITED STATES.

The Official Gazette of January 24, 1916, publishes the full text of an arbitration convention concluded between Panama and the United States. The high contracting parties agreed to submit to His Excellency, W. L. F. C. de Rappard, Minister of

Holland, near the governments of the countries in interest, the fixing of the damages which are to be paid on account of the death and injury to American citizens resulting from the quarrel which took place at Cocoa Grove in the city of Panama on July 4, 1912.

PARCEL POST CONVENTION WITH VENEZUELA.

The Official Gazette, of Panama, of January 31, 1915, contains the full text of the parcel post convention concluded between the republics of Panama and Venezuela.

IMMIGRATION.

An executive decree concerning immigration and naturalization prescribes that, in addition to the requirements as to proof of domicile, the parties in interest must prove by a certificate of registration that they have complied with art. 12 of the law of December 12, 1912. The deposit made by the immigrant will be returned to him after he has found employment. Immigrant workmen who contract to labor on the Canal Zone or for the Panama Railway are exempt from the provisions of this decree, as are foreign agriculturists brought over by the government, and persons whose services have been contracted for by individuals and firms doing business in the Republic. Foreigners who suffer from physical defects to the extent of incapacitating them from earning a livelihood will not be permitted to enter the Isthmus, unless provided by means with which to maintain themselves. To obtain naturalization papers the candidate must have resided the required time in the country, must be of good character, and fulfill in other respects the requirements of the naturalization law.

CODES.

The seven codes of laws prepared and submitted by a special codifying commission have been approved by the National Assembly and ratified by the President of Panama. These codes are the civil, penal, commercial, judicial, administrative, fiscal and mining, and include an up-to-date compilation of all the laws now in force in the Republic. They will go into effect July 1, 1917.

CIVIL REGISTRATION.

The executive power has recently issued a decree regulating the law of civil registration, with a view to simplifying the status of foreigners residing in the Republic.

FRACTIONAL CURRENCY.

The National Assembly has authorized the President to order the coinage of fractional currency of the denominations of $2\frac{1}{2}$ and 5 centesimos de balboa up to the sum of 25,000 balboas, the new coins to be of the same designs and characteristics as those of similar denominations now in use. W. S. P.

SALVADOR.

PATENTS AND TRADE-MARKS.

In 1915 the bureau of patents of Salvador registered 26 trademarks and six patents of invention.

DECISIONS OF THE SUPREME COURT.

In 1915 the Supreme Court of Justice and its sectional divisions rendered 431 final judgments, 3478 interlocutory judgments, 5210 affirmatory decrees, 771 writs of discovery and considered 54 reports.

STUDENTS IN JURISPRUDENCE.

There were 84 students in the school of jurisprudence and social science in 1916.

TAX ON ATTORNEYS-AT-LAW.

The National Legislative Assembly has repealed paragraph 8 of art. 1 of the legislative decree of August 7, 1900, which imposes an annual license tax of 10 pesos on attorneys-at-law who desire to practice their profession in the Republic.

JOINT STOCK COMPANIES.

The executive power has notified joint stock companies doing business in the Republic that they are required to send a report every six months to the inspection office, giving an account of their operations including a statement of profit and loss, dividends declared, and such other information as may be requested by the said office.

TAX ON ARMS AND EXPLOSIVES.

The National Legislative Assembly has modified the law governing the manufacture and sale of arms, explosives, etc., in the Republic so as to require an annual payment of 100 pesos for

each main office or factory, and 50 pesos for each branch office or factory if located in the same department, but if situated in different departments then each branch office or factory is required to pay the full quota of 100 pesos annually. If, however, branch offices or factories are maintained in the same city in which the principal office or factory is located, they are required to pay an annual tax of 25 pesos each.

MERCHANDISE ON FREE LIST.

Congress has passed a law assessing a fine on persons, companies and corporations which do not comply with provisions of art. 1 of the law of April 23, 1900, concerning the importation of merchandise classified in the free list.

INCOME TAX.

On June 19, 1916, Congress passed a law imposing a general tax on incomes. The law prescribes that all persons who have incomes over 2000 pesos (peso, \$0.3537) are subject to the tax. The tax is payable in two installments, January 1-February 28 and July 1-August 31 of each year, at the legal domicile of the persons subject thereto. The incomes subject to the tax are as follows: Incomes from 2000 to 3000 pesos, 2 per cent; from 3001 to 4000 pesos, 2½ per cent; from 4001 to 10,000 pesos and additional ½ per cent on every 1000 pesos; and from 10,001 pesos and over, 6 per cent.

El Diario Oficial of August 30 contains a text of the law. Taxes are levied on professional fees, salaries, land rents, house rents, interest on capital, etc. Corporations are not included under the new regulations; a list of stockholders showing the profits of each person, however, must be presented to officials of the government.

W. S. P.

JURISPRUDENCE.

Piza vs. Lindo, Supreme Court, July 7, 1916 (Registro Judicial, Vol. XIII, No. 79, August 31, 1916, p. 743).

Decedent, Joshua J. Lindo, an American citizen, domiciled in New York, left a will, which was duly admitted to probate in New York, whereby he disinherited two grandchildren, children of a deceased daughter. All the parties interested were American citizens, residents of New York. Decedent however left real and

personal property in Panama, where disinheritance, except for cause, is prohibited. *Held*, upon suit of the disinherited grandchildren, that they were forced heirs and that they were entitled, by right of representation, to the rigorous *legitime* as to the realty and personalty in Panama their mother would have taken by law if living: that she having been born in Panama, was a Panamanian citizen and was not divested of that citizenship by marriage to an American, and that, in her favor and in favor of her children by right of representation, the Panama law of succession would apply. There was a strong dissenting opinion to the effect that the succession should be governed entirely by the laws of New York.

P. J. E.

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URUGUAY.

LEGISLATION.

Law of January 14, 1916 (Diario Oficial 3029, January 31, 1916), imposes a double tax on non-resident real estate owners. Foreign corporations owning land on which their industry is established pursuant to a concession from the government are not deemed non-residents. Other companies which have their principal place of business abroad, are. The surtax is to be borne by the land, notwithstanding any provision in lease that taxes are to be paid by tenant. Decree of January 27 (D. O., *id.*) regulates the law.

Law of January 25, 1916 (Diario Oficial 3037, February 10, 1916), amends Book IV of the commercial code in relation to bankruptcy, by providing a system of composition with creditors (*concordat preventif*), judicial or extrajudicial, avoiding the rigors of bankruptcy proceedings. The law also contains a table of corrected cross-citations for a number of articles of the code, made necessary by new enumeration. It does not apply to stock companies.

Law of January 25, 1916 (Diario Oficial 3029, January 31, 1916), on hereditary rights of recognized natural children.

Law of April 12, 1916 (*Diario Oficial* 3091, April 17, 1916), amends arts. 32 and 48 of civil registry.

Executive Decree of May 23, 1916 (*Diario Oficial* 3133, June 14, 1916), amends articles 115 and 116 of the consular regulations in regard to the execution by Uruguayans of wills abroad, with the intervention of diplomatic or consular authorities.

Law of July 11, 1916 (*Diario Oficial* 3157, July 13, 1916), amends the inheritance tax law of September 17, 1914. The tax ranges from 1 per cent on the legacy or share of the estate to a descendant under age on amounts less than \$2500, to 27 per cent assessed against distant collaterals or strangers on amounts above \$250,000. When the amount is less than \$300 or \$500 (according to degree of relationship) no tax is imposed.

Law of July 12, 1916 (*Diario Oficial* 3159, July 17, 1916), directs the Executive to furnish food to every inhabitant of the country who is out of work and without means of subsistence, unless such person has refused work that may have been offered.

Law of July 26, 1916 (*Diario Oficial* 3168, July 28, 1916), declares May 1 a national holiday as Labor Day.

Law of September 12, 1916 (*Diario Oficial* 3209, September 16, 1916), amends the law of procedure as to criminal actions for torts heretofore prosecuted on private initiative, so as to provide that they shall be instituted and carried on by the public authorities: the right to withdraw complaints is restricted: arrest, before judgment, in causes for violation of rights of honor and private tranquility, is abolished, except where departure from the country is probable.

Law of October 11, 1916 (*Diario Oficial* 3238, October 21, 1916), amending Section IV, Title VIII, Book II of the Penal Code (arts. 297, 298, as to crimes of corrupting the young, cadets and other crimes connected with the social evil) and suppressing "white slave" traffic.

Law of November 13, 1916 (*Diario Oficial* 3256, November 14, 1916), prohibits the export of wheat and flour until the harvesting of the present crop.

Law of November 20, 1916 (*Diario Oficial* 3262, November 21, 1916), creates a military aviation school.

- Law of November 24, 1916 (Diario Oficial 3270, November 30, 1916), interprets arts. 24 and 65 of law of December 31, 1878, as to disability of notaries in certain cases.
- Law of November 28, 1916 (Diario Oficial 3274, December 5, 1916), amends art. 13 of the Patent Law and transfers jurisdiction to grant extension of time for installation of privileged industries from the legislative to the executive power.
- Law of December 15, 1916 (Diario Oficial 3286, December 20, 1916), amending arts. 8, 9 and 16 of law of July 13, 1867, on notaries public. Notaries public are to be appointed by the university after examination, upon oath administered by the Supreme Court and inscription in the registry; must be citizens, 25 years of age, and of good character. They can perform their duties throughout the whole Republic.
- Law of December 16, 1916 (Diario Oficial 3285, December 19, 1916), increases the number of Representatives in the House of Representatives, and provides for minority representation, if the minority candidates obtain a vote of one-fourth or more of the total votes cast. Arts. 1, 3, 4 and 7 of law of July 11, 1910, are repealed, and art. 6 thereof is amended.

JURISPRUDENCE.

- From *Revista de Derecho y Ciencias Sociales*, 1916, Vol. 4, January-June, 1916.
- Fallo 1, 1916. *Alta Corte de Justicia*. Liability of the master for accident to workmen is founded, in Uruguayan civil law, not on the principle of risk of the occupation, for which master is liable, but on the customary theory of *culpa*. The master is not obligated to provide workmen with those instruments of protection against accidents of which no acceptable proof as to their practicability and advisability exists (p. 195).
- Fallo VI, 1916. It is not the certificate of the executive power authorizing inscription, but the actual inscription, that gives the ownership of a trade-mark. The laws governing trade-marks are special laws, to be strictly interpreted and the principles adopted in the civil code for quasi-delicts are not applicable (p. 400).

- Fallo XVII, 1916. The authorization of the court is an indispensable prerequisite to a contract of *anticresis* on the property of a married woman (p. 429).
- Fallo XXXIX, 1916. When both the victim of an accident and the defendant were at fault, the damages must be apportioned *pro rata* to the degree of fault: contributory negligence does not exclude the defendant's liability (p. 635).
- Fallo XLI, 1916. He who provokes a bankruptcy suit, although not legally a party thereto, is liable for the damages caused to the alleged bankrupt by a declaration in bankruptcy made by the courts induced to error by the initial denouncement (art. 1568, Commercial Code) (p. 641).
- Fallo XLIV, 1916. When the wife has no dotal property, she cannot demand a separation of property based on the claim that the husband is dissipating the *gananciales* obtained (p. 645).
- Fallo XLV, 1916. The display and sale of an article of commerce, of a certain mark, without authorization of the owner of the mark, does not warrant the application of arts. 38, 42 and 46 of the Trade-mark Law (providing for seizure of infringing articles and damages), if there is no fraud or illicit act in using the mark (p. 649).
- Fallo L, 1916. In a civil action for libel, only actual material damages can be awarded; no compensation for the moral injury (p. 664).

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In the *Revista de Derecho y Ciencias Sociales*, 1916, the following noteworthy articles appeared:

Draft of a mining law and commentary, by Dr. Edo. Acevedo;
Draft, and commentaries, of amendments to the Chilean Civil Code, by Luis Claro-Solar; Unconstitutional Laws, by Enrique C. Armand-Uzon, advocating the United States system; Donations, by Dr. Joaquin Secco-Illa. Cedres Köppen. Uruguayan Marriage and Divorce in private international law.

Codigo de procedimiento civil, 4° edicion, corregida y aumentada. Montevideo, Barreiro y Ramos, 1916.

Rafael Gallinal: Estudios sobre el codigo de procedimiento civil. Vol. 5. Montevideo, 1916. P. J. E.

VENEZUELA.

LEGISLATION.

Law (Gaceta Oficial, No. 12785, extra number, March 8, 1916) regulating the working of mines, provides for the inspection of mines by the government, giving it the right to decide what kind of machinery is to be used, the manner in which the mine is to be worked, etc. The general safety and protection of the employee from accidents appears to be the main object of the act.

Gaceta Oficial, July 31, 1916. Law regulating duties and functions of attorney-general.

Gaceta Oficial, extra number, August 31, 1916. Text of new civil code, 2064 articles. New law on mortgage bonds (*cedulas hipotecarias*).

The law enacting this new code was passed by Congress June 22, 1916, signed by the President, July 4, 1916, and the code took effect December 19, 1916, repealing the Civil Code of 1904. The main body of the code is practically unaltered; the arrangement is unchanged; changes in phraseology and additional articles are frequent, clarifying but probably not substantially modifying the pre-existing law. As this is the fundamental code of the country, it may be of value to point out some of the leading amendments.

Book I, Article 17 of the 1904 code reading "Domiciled foreigners enjoy in Venezuela the same civil rights as Venezuelans, with the exceptions heretofore or hereafter established. This does not prevent the application of foreign laws relative to the status and capacity of persons in cases authorized by private international law" is replaced by art. 20: "Foreigners enjoy in Venezuela the same civil rights as Venezuelans, and are especially subject to the provisions of the constitution and laws of the Republic and to the stipulations of international treaties." Title III. Absentees. The time for definitive possession of an absentee's property on presumption of death is cut down from 30 to 10 years, and a change in phraseology marks the distinction between persons abroad known to exist and absentees who have disappeared; there are minor changes also. Title IV on relationship recognizes relationship by affinity also; the corresponding title of the old code only expressly recognizes relationship by consanguinity. Title V. Matrimony; amends the law on betrothments

and breach of promise. The necessity of civil marriage is continued. Under the old code (art. 121) Venezuelans marrying abroad were obligated to record their marriage within six months after their return. The new code (art. 130) imposes that obligation absolutely, regardless of return or not. The law makes serious charges in regard to marriage abroad and the marriage of foreigners in Venezuela. Foreigners married abroad are now required within one year of taking up their domicile in Venezuela to record their marriage (art. 137). Foreigners marrying in Venezuela, must, in addition to the former requirements, prove that they are competent to marry according to their own national law. There are now express prohibitions (art. 132) against applying in Venezuela a foreign law permitting specified marriages not allowed in Venezuela. Art. 185 adds to the cases wherein or for which the wife does not require marital authority (old art. 191): when the husband is a minor, under interdict, or absent; and to dispose of her property by will. The new, like the old code, authorizes absolute divorce, unlike most Spanish-American countries. Title V. The law as to natural children is modified in their favor. The rigorous prohibition of investigation into paternity of the old code (art. 217) is softened. The prohibition now extends (art. 247) only to cases where their recognition is prohibited and they are entitled in certain cases to support. There are additional provisions as to legitimation. Title IX, education and support, extends the obligations of parents (art. 308) to illegitimate children whose filiation has been duly proved. Title XIII. Registry of civil status, including provisions as to interment, somewhat amended. Among other things all acts and entries connected with the civil status, are exempt from stamp or other taxes (art. 494) and civil liability is imposed on officials for damages caused by their wrongful acts or omissions (496).

Book II on Property. Title I attempts to make a more scientific definition, classification and enumeration of immovables and movables. Immovables are so either by (a) their nature, (b) destination or (c) the purpose to which they refer (art. 498). Movables are so either by their nature, or because the law so prescribes (art. 508). The rule of the former code was that everything not comprised in the articles defining and enumerat-

ing immovables was movable. The new code will, it is to be apprehended, not be very much more successful as a working rule in avoiding difficult questions. Title II on Ownership. Minor charges. Title III. Limitations on Ownership (usufruct, etc.). There are some changes in the homestead (*hogar*) law (arts. 614-624). Natural servitudes: Restrictions are imposed (arts. 641, 642) in the interest of conservation of natural resources, on cutting or burning forests. Art. 642 prohibits the owners of unfenced pasture lands from excluding the cattle of neighbors. Some modifications intended to permit freer industrial development, especially for hydro-electric enterprises, are introduced in the law of waters and the servitude of aqueduct. Title V on Possession adds the following new provisions, in favor of trade: Possession produces, in favor of third parties in good faith, in respect of property movable by nature and of negotiable instruments to bearer, the same effect as ownership (art. 783). The effect of this is rendered doubtful however by art. 784. "Nevertheless, he who has lost a thing or been robbed thereof can reclaim it from the holder, without prejudice to the latter's right to claim damages from the person from whom he received it." Art. 785, however, protects a purchaser in market overt (at public sale, or from a merchant publicly selling analogous things) to the extent of the price paid.

Book III. Title II. Succession. The law is changed in regard to the rights in the succession of natural children (arts. 813, 821, 870 and elsewhere). The incapacity of those in holy orders to take by will is varied somewhat (art. 829). A new article is inserted (art. 1110) whereby each heir is deemed to have inherited, alone and immediately on the death of the decedent, all the property comprised in the share allotted to or received by him and never to have had the ownership of the other property of the inheritance. Title IV. Obligations and Contracts in General. The deficiencies of the old code in respect to liability for torts are not improved. There is a slight modification as regards liability for damage done by animals. Title XXII. Preferential Liens and Mortgages. Art. 1948 puts registry fees and inheritance taxes in the same class as land taxes, as privileged liens, subordinated, however, to prior vested real rights (mortgages, etc.) of third parties. There is no equivalent to art. 1858 of the old code,

whereby the mortgage debtor can transfer the mortgaged property without extinguishing the encumbrance, but cannot validly do so if alienation is prohibited." The effect seems to be to now permit valid alienation. A mortgage by operation of law (*hipoteca legal*) is given in addition to old code cases (art. 1861) in these cases: To descendants on the immovables of the ancestor administering their property; to juristic persons not having the administration of their property, on the immovables of their respective administrators; to the creditor for work, labor and materials in building, reconstruction or improvement of urban or rural property, factories, offices or other buildings, on said immovables. (*Mechanic's Lien.*)

New Code of Civil Procedure (Gaceta Oficial, extra number, September 26, 1916), enacted by law passed by Congress June 26, 1916, signed by the President July 4, 1916. Like the civil code, it is very largely a re-enactment of the existing law. The following seem to be the chief new additions: Book I, Title XIV on the Nullity of Proceedings in a Suit; arts. 324 to 330 on the acknowledgment (in court) of private instruments; arts. 533 to 537 on the enforcement, by execution, of a mortgage; arts. 689 to 697 on tender and payment into court. P. J. E.

3. EUROPE.

BELGIUM.

The military governor for the occupied territory of Belgium has issued a number of decrees bearing dates, respectively, February 17 and August 26, 1915, and February 18, 1916, concerning corporations, partnerships and other commercial enterprises doing business in Belgium. The regulations are, in effect, legislative and relate to all commercial organizations, belligerent or neutral, doing business in the occupied territory of Belgium, or having branch establishments, agencies, warehouses or real property therein.

Article I. The commissary-general of banks in Belgium may, with the approval of the military governor, place in the hands of a receiver, every commercial enterprise

1. Of which the directors or managers reside in an enemy country;

2. In which subjects of enemy countries are interested at least to the extent of one-third in respect of capital, income or management;

3. Of which important operations are conducted in enemy countries;

4. In which the maintenance or resumption of operation is a matter of public interest for the German Empire or for the occupied territories of Belgium;

5. Of which the operation is contrary to or of such a nature as to endanger the interests of the German Empire.

The foregoing applies also to branches, agencies, warehouses and property in land in Belgium, belonging to commercial enterprises, existing outside of Belgium; the foregoing also applies to any commercial enterprise conducted by the subject of a neutral country where they have interposed in order to conceal the status of the real parties in interest.

Art. II. Whenever an enterprise is conducted under such conditions as to justify the assumption that one or more of the conditions provided by art. I are presented, the commissary-general of banks has the right to inspect its books and papers and to demand from the managers, proprietors and employees of such enterprise, as well as from all other persons, information of the condition of its affairs. He may, in all cases, delegate the exercise of this right to his agents.

Art. III. Receivers shall be appointed and removed by the commissary-general of banks. The trade-names and the name of the receivers of all such enterprises must be published in the Official Bulletin of Laws and Decrees for the occupied territory of Belgium.

Art. IV. The receiver shall take possession of the enterprise and shall alone be deemed authorized to act in its name and dispose of all of its assets. During the pendency of the receivership, the rights of the owners of the enterprise and of all the other persons and mandataries ordinarily authorized, are suspended. This applies particularly to all meetings of stockholders, to the board of directors and the managers, as well as to any other organs of stock companies.

The receiver may, with the approval of the commissary-general of banks, delegate certain of his powers to other persons, particu-

larly to the employees of the enterprise in order to assist him in carrying out his functions. Employees of the enterprise must furnish the receiver with all required information and turn over to him all of its books, papers, keys, merchandise and other effects, and comply with the orders of the receiver.

Art. V. The receiver may continue the enterprise in whole or in part. He may also in his discretion liquidate its affairs.

Art. VI. The enterprise must bear all the costs occasioned by the receivership, including the fees of the receiver, as fixed by the commissary-general of banks, such fees to be deemed preferred debts.

Art. VII. The receiver is responsible for his administration to the governor-general alone.

Art. VIII. The commissary-general of banks is authorized to make such rules as are necessary for the execution of this decree, specially in respect of distributions of the profits to the parties in interest.

Art. IX. Every infraction of the provision of the decree is punishable by fine not to exceed 100,000 francs, or imprisonment not exceeding one year, or both. Attempts are also punishable.

The military tribunals shall have sole jurisdiction to determine infraction (*Revue de droit international privé*, 1916, pp. 353-355).

The sixth volume of German Legislation for the Occupied Territories of Belgium (edited by Huberich and Speyer, The Hague, Nijhoff) contains the decrees, administrative regulations and official notices issued in 1916 down to April 1. The regulations are for the most part administrative in character. Reference, however, may be made to the following, which are of legislative interest:

Decree of January 5, 1916, concerning the extension and modification of the moratorium applicable to Belgium.

Decree of January 7, 1916, concerning the protest of negotiable instruments through the post office.

Decree of February 9, 1916, concerning the verification of signatures and public documents.

Regulation of February 22, 1916, concerning the prohibition of payment of negotiable instruments containing enemy endorsements.

A. K. K.

GERMANY.

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Because of the difficulty in procuring German books and bibliographic information at the present time, the following list of important publications of the year is incomplete. I hope to complete it with a supplementary list later:

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FEES.

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R. L. L.

GREAT BRITAIN.

LEGISLATION, 1916.

As we would expect, the financial of the present war occupies a very commanding place in the legislation of the past year. There were four acts making appropriations out of the consolidated fund to the service of the government for the fiscal years ending March 31, 1916, and March 31, 1917, respectively, the amounts thereof aggregating the bewildering total of one thousand two hundred and twenty-seven million, ninety-six thousand, five

hundred and nineteen pounds sterling. The latest of these four acts was approved August 3, 1916, so that the expenses of the government for the current fiscal year may yet exceed the estimates made at that time, and require still further appropriations. This vast total, moreover, is in addition to the sums appropriated by acts approved prior to March, 1916, for the fiscal year ending on the 31st of that month.

The remaining acts of the session approved during the past year are almost without exception acts relating to the conduct of the war itself, or to the extraordinary social conditions directly resulting from the war.

6 & 7 Geo. 5: Chapter 2 (March 2, 1916) is an act to amend the law as to the jurisdiction of prize courts; it regulates proceedings against persons in His Majesty's Naval Service or in the employment of the Admiralty.

Chapter 4 (March 30, 1916) is the Naval and Military War Pensions (Expenses) Act. It carries with it an appropriation of one million pounds towards meeting the expenses of the committee in charge of pensions in the year ending March 31, 1916. This appropriation is in addition to the General Appropriation Acts already referred to above.

Chapter 5 (April 19, 1916) is the Annual Army Act; and provides during 12 months for the discipline and regulation of the army and for the raising and keeping of naval and military forces for the conduct of the present war; and the trial of offences against military law; for the year ending April 30, 1917, within the United Kingdom; and elsewhere, ending July 31, 1917.

Chapter 6 (April 19, 1916) is an act to facilitate the insurance against war risks of property subject to trusts.

Chapter 7 (April 19, 1916) is the Marriage (Scotland) Act; its purpose is, *inter alia*, to provide for registering irregular marriages, and also to facilitate the marriage of men in the naval or military forces of the crown in Scotland, by doing away with the requirement that the man shall have resided in the parish or district for at least 15 days previous to giving notice of the intended marriage, leaving this requirement to apply only to the female party to the marriage.

Chapter 11 (April 19, 1916) is called the Finance (New Duties) Act. It imposes an excise duty on all payments for

admission to any entertainment; except entertainments devoted to philanthropic or charitable purposes, or wholly of an educational character, or intended only for the amusement of children (when the charge is not more than one penny for each person); and other specified entertainments of special character. The amount of the duty varies according to the amount of the admission charge, and ranges from a half penny, where the admission does not exceed two pennies, up to one shilling, where the admission does not exceed 12 shillings 6 pence; and one shilling for every additional 10 shillings. Payment of this duty is secured by requiring that the admission ticket to the entertainment shall not be valid unless stamped with a stamp denoting the payment of the duty; in special cases, instead of using stamped tickets, the patrons shall have admission to the entertainment through a mechanical barrier or contrivance which automatically registers the number of persons admitted; in which cases the proprietor of the entertainment shall give security for the payment of the *per capita* tax.

The same act also imposes a duty of customs on matches imported into the realm; and an excise duty on all table waters; and on cider.

Chapter 12 (May 17, 1916) makes provision with respect to officers and servants of local authorities serving in or with his majesty's forces during the war; to the end that such officer or servant may have leave of absence during the period of his service in the war, and during that time shall (or his wife, or dependants nominated by him shall) receive an amount from the local authority which, added to his naval or military pay, shall equal his former salary. Further provision is made for payment of the officer or servant, or his dependant, in case of his death or disability from wounds or disease received or contracted during his service.

Chapter 13 (May 17, 1916) is an act to amend the Courts (Emergency Powers) Act, in relation to officers and men of his majesty's forces; and contains provisions for collecting sums of money due under contracts made before the commencement of the principal act of 1914. It also regulates applications by men of the army or navy for the termination of their tenancy of premises held from year to year or for a longer period, upon such

notice and conditions as the county court for the district may think fit to prescribe.

Chapter 14 (May 17, 1916) is called the Summer Time Act; and comes within the class of what are popularly known as "Day-light Saving Acts." It directs that during the summer time of the year 1916 in Great Britain and Ireland the time for general purposes shall be one hour in advance of Greenwich mean time and Dublin mean time, respectively. It provides that "Wherever any expression of time occurs in any act of Parliament, Order in Council, order, regulation, rule or by-law, or in any deed, time table, notice, advertisement, or other document, the time mentioned or referred to shall be held, during the prescribed period, to be the time as fixed by this act." However, the act does not affect the use of time for purposes of astronomy, meteorology or navigation.

Chapter 15 (May 25, 1916) is an act to make further provision with respect to military service during the present war; it has the effect of making every male British subject resident in Great Britain, between the ages of 18 and 41 years, a member of his majesty's regular forces for general service as if he had enlisted and been transferred to the reserve; except where he is granted exemption under the provisions of the act. These provisions include, among others, persons who are found physically unfit after medical examination; duly qualified medical practitioners; and persons who are confined as prisoners of war at any time during the present war. This act may some day be used as a model for a similar act in our own land, if the movement in favor of universal military training and service continues to grow in strength.

Chapter 17 (June 1, 1916) is an act to amend the Naval Discipline Act with respect to the powers and duties of the commander-in-chief of the grand fleet during the present war. It applies chiefly to the holding of courts-martial in the navy.

Chapter 18 (June 1, 1916) is an act to give to courts in connection with the present war further powers of granting relief in proceedings to foreclose mortgages; in petitions for the winding up of any company; in leasing dwelling houses on terms most favorable to tenants; and in applications for permission to build where it is to the interest of the nation that such a building should not be erected during the present war; and other cases.

Chapter 20 (July 19, 1916) is an act to extend the provisions of the National Insurance Act, 1911, relating to unemployment insurance to certain trades and employments in connection with the present war. It extends the provisions of that act to every person, being a workman as defined in the act, who is engaged in connection with munitions work as well as in certain trades mentioned in the schedule, such as the manufacture of chemicals, metals, rubber and rubber goods, leather and leather goods and artificial building materials.

Chapter 21 (July 19, 1916) is an act to amend the marriage of British subjects (Facilities) Act, 1915.

Chapter 23 (July 19, 1916) is an act to extend the term of service of the royal marine force to the end of the present war.

Chapter 24 (July 19, 1916) is another Customs and Inland Revenue Act. It increases the present duties on cocoa, coffee and chicory; the excise tax on substitutes for coffee; the customs duties on sugar and the excise duties thereon; and levies duties on table waters and cider, on mechanical lighters, and on motor spirit.

This act also provides for an income tax at the rate of five shillings per pound and continues the super-tax already in force. Certain reductions of the tax are provided for in cases of individuals whose income is earned, altogether or in part. It also imposes an additional income tax of two shillings on the income derived from securities which the Treasury Department are willing to purchase at the rates specified in the treasury lists published from time to time in accordance with the act. Reduced rates of tax are provided for soldiers and sailors, in respect of their pay.

The act also continues and increases from 50 per cent to 60 per cent the rate of duty on excess profits provided for in the Finance (No. 2) Act (1915); also increases the rate of excess mineral rights duty to 60 per cent of the excess. In the case of the sale of ships since the commencement of the war, where the sale is not in the course of trade or business, the excess profits of the sale are made subject to the tax.

The same act gives the national treasury power to borrow during the continuance of the war, for the purpose of raising any sums which they are authorized to issue out of any Appropriation

Act; on exchequer bonds payable not later than five years after date. It also suspends the operation of the new sinking fund during the current financial year.

Chapter 26 (August 3, 1916) limits the output of beer by brewers under penalty of heavy fines. The maximum barrelage permitted to each brewer shall be determined by the commissioners provided for in the act. The act also prohibits the granting of licenses for new breweries, except to persons already holding such licenses, and for the same premises as those in respect of which the previous licenses are held, or for premises substituted for them.

Chapter 29 (August 3, 1916). This is one act which contains a principle that might well be generally adopted in the United States. It is called the "Expiring Laws Continuance Act," and provides that the acts mentioned in the schedule appended thereto shall be continued until December 31, 1917, in some cases; and until March 31, 1918, in other cases. The acts enumerated in the schedule cover a wide variety of subjects, such as textile manufactures, corrupt practices, Parliamentary elections, unemployed workmen, vaccinations, national insurance, coal mines, agricultural rates, land drainage, etc. If many acts passed by our American state legislatures, as well as by Congress, were in terms limited to expire after a certain period, unless revived and renewed by another act of the same authority, it would tend to prevent the continual accumulation of acts on our statute books which are obsolete, and whose purposes have been outgrown or fully carried out; but which are seldom repealed, owing to indifference on the part of the legislators, or the press of legislative business; and which serve only to encumber the digests and conflict with later legislation.

Chapter 31 (August 3, 1916) is an important act to amend the law relating to the police and the police power of the nation. It provides particularly that ex-constables may continue to draw any pensions payable to them under the Police Act even though they enlist or receive commissions in his majesty's forces or obtain employment under the Admiralty or Army Council or the Ministry of Munitions. Provision is also made for extra payments to such constables serving in the war, and in case of the death in the service of any constable who is not entitled to a

pension from the police fund, the police authority shall pay his dependants the deductions which have been made from his pay toward pension. When any person is injured or killed while assisting the police under the supervision of the police authority in the execution of any of their duties connected with the present war, the police authority may grant him or his dependants pensions and allowances. Part two of this act gives the Secretary of State very sweeping powers to secure the welfare of workers in factories and workshops by requiring the occupiers thereof, whenever the circumstances of the work require, to make suitable arrangements for the meals of the operatives, their supply of drinking water, protective clothing, ambulances and first-aid arrangements, the use of seats in work-rooms, facilities for washing and other accommodations.

Chapter 32 (August 10, 1916) is an act to make provision with respect to copyright in works first published or made in an enemy country during the present war, and provides that copyright in all such works shall vest in the public trustee in his capacity as custodian under the Trading with the Enemy Amendment Act, 1914, with all such powers, rights and remedies in relation to the work as would otherwise have vested in any person as the first owner thereof under the Copyright Act, 1911.

Chapter 34 (August 17, 1916) is an echo of the costly and disastrous military and naval operations undertaken by the allied forces in the present war in the region of the Dardanelles and Gallipoli and in Mesopotamia. It creates two commissions of distinguished civil, military, and naval officers, and members of Parliament, for the purpose of inquiring into the origin, inception and conduct of operations of war in those regions, and the responsibility of those departments of government whose duty it has been to minister to the wants of those theatres of war. The commissioners were given very sweeping powers as to the attendance of witnesses, production of testimony and documentary evidence, and were authorized to hold sittings outside of the United Kingdom. The report as to the Dardanelles is already in.

Chapter 38 (August 23, 1916) is an act to provide for the acquisition and management of land by the state for experimental small holding colonies during the continuance of the present war, and 12 months thereafter; under the Board of Agriculture

and Fisheries. They are authorized to acquire suitable land by agreement with the owner, not at any time exceeding six thousand acres in all; and in the selection of persons to be settled on this land they shall give preference to persons who have served in the naval or military forces of the crown in the present war. The board are authorized to promote the co-operative working of these holdings and have power to let or manage the land or improve it in a manner similar to that provided in the Small Holdings and Allotments Act of 1908.

Chapter 43 (August 23, 1916) provides for the registration of charities for purposes connected with the present war, with the mayor, alderman and commons of the city of London, in that city; and with the county or municipal authorities in other places. It prohibits making any public appeal for donations in money or in kind, to any war charity as defined in the act, by any bazaar, sale, exhibition or similar means, except for registered charities, and only after the written approval of the governing body of the charity has been duly obtained. The act, however, does not apply to collections at divine service in places of public worship. Very complete and judicious provisions are made to secure the proper registration of worthy charities, and their honest and economical management, subject to the supervision of the Charity Commissioners. In view of the unprevented need for vast contributions for the relief of those who are injured or rendered dependent as a result of the world war, it was inevitable that measures for such relief should be brought under governmental supervision.

Chapter 46 (August 23, 1916) is an act arising from the conditions of practically civil war existing in Ireland recently. It provides, among other things, that the period from April 24 to May 8, 1916, shall not be reckoned in computing the times limited for the doing of any act or taking of any proceeding in any court in Ireland; and authorizes the courts in Ireland to grant extensions of time and other relief to those who by reason of the recent disturbances are unable to do any act or take a proceeding within the time limited by law. Provision is also made for filing and enrolling properly authenticated copies of documents in any public office which have been lost or destroyed during the recent disturbances. No claim for compensation for injuries shall lie

against a local authority in respect to any injury to person or property sustained in the course of these disturbances.

Chapter 47 (August 23, 1916) is an act to facilitate the investment of savings in securities issued for the purposes of the present war; by means of municipal savings banks. These banks are to be established with the consent of the treasury after consultation with the local government board or the secretary for Scotland; and the repayment of their deposits, and interest thereon, is secured by the government, through the councils of the various municipalities.

From this brief summary of legislation, it will be seen how the activities and resources of the British nation have been concentrated and organized for the purpose of winning the life and death struggle in which it is now engaged; and how its legislature has little time or thought for any measures not likely to further that supreme purpose.

M. H.

SCANDINAVIA.

LEGISLATION 1915.

DENMARK.

Law No. 138, May 10, 1915, about prevention of the spread of contagious diseases. The law is divided into four parts, the first concerning the authorities charged with its enforcement, the second enumerating the diseases which always shall be under the charge of the authorities, the third concerning treatment of other diseases, and the fourth setting forth rules of administration.

Law No. 144, same date, about approved sick benefit associations. This law is a further development of similar legislation already in force. Its aim is to keep the population healthy, in so far as this can be done by public regulation, and to avoid waste in money and effort.

Law No. 65, March 12, 1915, provides a semi-official institution for the furnishing of loans to municipalities. This law is temporary and a war measure, caused by the cutting off of the English and German supply of capital for such purposes.

Laws Nos. 57, 58, 59, January 12, 1915, are amendments to prior laws concerning protection for trade-marks, patterns and patents.

Law No. 273, October 1, 1915, and No. 99, April 14, 1915, have practically ended the moratoriums granted by former laws.

Of the other great amount of legislation enacted during the year, the only act of general interest, and the most important of them all, is the new constitution, approved by the king on June 5, 1915, 66 years after the date when Denmark's first liberal constitution was enacted.

For the great majority of its clauses it is a re-enactment of the constitution of July 28, 1866, but with very significant alterations in most important matters.

Its outstanding feature is the grant of the franchise to all men and women, 25 years of age, who are citizens and have a fixed residence within the country, with certain exceptions as to criminals, paupers, bankrupts and persons *non compotes mentis*.

This free and equal suffrage extends to both houses of the Rigsdag. Formerly a somewhat Prussian system ruled in elections to the upper house, enabling the higher tax-payers to control it. But no elector can vote for members of the upper house (Landsting) until he or she is 35 years of age.

Under the former constitution great conflicts arose over the question of what to do when the annual appropriations had not been voted prior to the expiration of the fiscal year. All doubt existing has been cleared away by the new constitution. This new constitution was to take effect one year after its approval by the king, but also contained a provision that the Rigsdag by statute could postpone the date; this has been done by act of March 15, 1916, and the date has been fixed as of June 5, 1917. The situation caused by the war is responsible for this.

As a companion of the new constitution, a new election law has been passed (Law No. 142 of May 10, 1915, about elections to the Rigsdag). Under the old election law, the members of the Landsting were elected by the proportional method (Andrae's). Under the new law the same method has, to some extent, been introduced into elections to the Folketing, also. The elections to the Landsting are indirect, through electors, one for each 1000 inhabitants or fraction thereof. The proportional method applies to the election, as well of the electors as of the members.

A number of laws enacted refer exclusively to conditions created by the war, and are temporary in their nature.

ICELAND.

During 1915 Iceland adopted a new constitution which went into effect January 19, 1916. Sec. 10 gives the franchise to women and to certain classes of men heretofore excluded. Hereafter all men and women of 25 will have the franchise for the directly elected, and those of 35 years for the proportionally elected members of the Alting. The lower house has 26 members, the upper 14 or 40 in all. Thirty-four of these are elected by direct majority vote in smaller districts; six are elected by the country at large, but by proportional voting, which six form part of the upper house; then all of the 40 members elected, select from among the 34, eight members to sit with the six to form the upper house; at this election proportional voting may be used. The six must be 35 years old or over, the others need be 25 years old, only; the six are elected for 12 years, one-half to be renewed every six years.

The King of Denmark is the sovereign of Iceland, but at his ascension to the throne of Denmark he must take an oath to preserve the constitution of Iceland. He rules Iceland through a minister, and he must countersign all royal decrees in order to make them of legal validity.

Iceland has the right to use a separate flag, but not outside its own territory.

A new election law was passed November 3, 1915; and on the same day was also enacted a new law about the order of business and general procedure of the Alting.

A law of the same date makes it a misdemeanor for men in the service of the province (as well as of various subordinate authorities) to go on strike, and prohibits outsiders from inducing such servants to strike. Infractions of the law are punishable by fine, prison or loss of position.

A number of other laws were passed during the year, most of them having in view the organization or re-organization of the administration of the country.

But of much greater importance than any legislation is the fact that during the year Iceland has practically ceased, temporarily at least, to be a self-governing dependency of the Danish crown, and has instead thereof become a dependency of England. It has been prohibited from exporting anything except with the

written permission of the local British consul, and such permits are given only, when the destination is Great Britain, or America. It cannot export one krone's worth of goods to its own motherland. Hence the newly established steamer line between Reykjavik and New York.

NORWAY.

Laws of April 29, June 18 and July 30, 1915, effect a partial re-districting of some election districts.

Law of June 4, 1915, deals with the education and care of deaf, blind and feeble-minded children.

Law of July 2, 1915, deals with neglected children.

Law of August 13, 1915, contains a number of new regulations about elementary schools in the country districts.

Three laws of August 13, 1915, deal with courts, procedure in civil cases and execution, but none of these laws have been put in force, and it will require additional legislation to make them operative.

Law of June 24, 1915, concerning reports to be made about travelers and foreigners is a war measure.

Law of August 6, 1915, submits all ships and expeditions to the Arctic and Antarctic to certain regulations, and no such ship is allowed to sail until after inspection and permit. This law applies to such expeditions only which intend to winter in frigid zones.

Law of same date about settlement and labor disputes. The law divides such disputes into two classes: 1. Disputes about the validity, interpretation and duration of wage-scales, as well as claims for money founded upon such. These are designated as legal disputes. Such disputes have been taken out of the jurisdiction of the ordinary courts and referred to a special court, called the Labor Court. The court consists of a president appointed by the king among lawyers qualified to be appointed Justice of the Supreme Court, and four other members appointed by the king, from among men nominated by the employers' associations and the Labor unions. The law makes it an offense against the law to attempt to obtain a settlement of such disputes by means of strikes or lockouts. The law recognizes both employers' associations and labor unions as capable of suing and of being sued. 2. Disputes about all matters concerning employment not con-

nected with existing wage-scales. These are referred to conciliation committees, each having jurisdiction within a certain district, but all having the same president. The law prohibits lockouts and strikes in these matters until after such notices of abrogations have expired, as the existing agreements may require, and until four week days after one of the members of the conciliation committee has received notice, that notice of termination has been given, without conferences having commenced, or that such conferences have been broken up, or the scope of the notice extended. If the conciliator shall be of the opinion that the stopping of work, by reason of the nature and extent of the business will be detrimental to the public interest, he shall at once prohibit the parties from stopping work. At once, upon the issuing of such injunction, he shall take steps towards conciliation. In case stopping of work has been prohibited, the conciliation must be finished within 10 days, and if not so finished, it must stop within four days after notice to that effect from either party. The necessary rules of procedure and as to penalties for infringements are also contained in the law. The bill as introduced contained certain rules about obligatory arbitration of disputes concerning matters under (2), but these were stricken out by the Storting.

Law of April 10, 1916, fixes the status of children of "a father and a mother who have not entered into marriage" (the law avoids the use of the words "illegitimate children"). The general principle established by this law, is that a child born out of wedlock shall have the same legal rights in relation to the father and to the mother, but with the important proviso: with such limitations as the law necessitates. The law gives the child the right to the family name of both father and mother, but in case the father's name was not originally assumed, it cannot be taken later except under compliance with the rules for change of name. The child has the right to such maintenance and education as the means and position of the best situated parent shall warrant. The mother is entitled to the custody of the child, but under special circumstances it may be left with the father. Whichever parent has the custody of the child shall provide for it in the same manner as if it had been born in lawful wedlock, the other parent to make so-called alimentation—contributions until the end of the 16th year. These contributions shall be so fixed that, con-

sidering the economic conditions of the parents, each is made to bear an equal burden, but as to the father's contributions certain comparatively high minimum rates have been fixed. Where the child remains with the mother, the father must pay an additional "suckling contribution" for the first nine months of its life, and may be made to pay special contributions toward sick and funeral expenses as well as towards expenses incurred for its baptism and confirmation. The father must also pay the mother the expenses of her confinement, and alimentation for the last three months prior thereto.

In order that the father may become known, the law imposes upon the mother the duty to divulge the father's identity, and requires the attending physician or midwife to report the birth to the proper authorities at once. The proper authorities must make a demand upon the father for the contributions imposed by the law. Unless the putative father shall, within a certain short term, commence action to have himself declared, not to be the father of the child, his paternity is considered established. In case such action be brought, the court must declare the putative father to be the actual father, if it be shown, that he and the mother had celebrated coitus at such a time that he can be the father, and there is no evidence that other men have had connection with the mother during the same period. But if it is shown that as well the putative father as another man or men may be the father, the court must order him to make the contributions imposed by the law, but must not decree him to be the father of the child.

The remainder of the Norwegian legislation of 1915, which appears to have been abundant, mostly concerns strictly local matters or conditions traceable to the war.

SWEDEN.

In Sweden they have, since many years, had an officer of a peculiar character, the so-called "Justitie-Ombudsmann." He is elected by each "Riksdag," and his term expires with it; he must be a "man well known as being learned in the law and of the highest degree of honesty." His business is "to see to it that the laws are complied with by judges and officers." This office was by act of May 14, 1915, divided into two, the new officer

being called "Militie-Ombudsmann," under whose jurisdiction come all military and naval matters, except those of purely technical nature. Both of these officers make annual reports to the Riksdag.

The law about marriage, dissolution of marriage and divorce was enacted under date of November 12, 1915, upon the basis a uniform Scandinavian bill proposed by a Swedish-Norwegian Danish commission. The law, as enacted in Sweden, has made various changes in the proposed bill, and it may be advisable to postpone the consideration of its provisions until a time when similar laws shall have been passed in Norway and Denmark.

Two acts of June 11, 1915 (about contracts and about purchases on the installment plan) are likewise the outcome of bills proposed by a Scandinavian commission. The laws, as enacted in Sweden, vary to a small extent from the proposed bill. In this case, also, it will be advisable to postpone comment until similar Norwegian and Danish laws shall have been passed.

An act of May 14, 1915, attacks the law's delays before the king (that is, in the Supreme Court; but as the king has a constitutional right to sit in Supreme Court, where he has two votes, a right, however, which has not been exercised for more than 100 years the fiction is kept alive, that the proceedings are before the king). A greater capacity for work is sought to be obtained by having the court sit in departments of five judges instead of seven as heretofore, whereby 12 working weeks have been gained. Greater speed is sought to be obtained by limiting the time allowed for addressing the court, etc. It is also sought to reduce the number of cases appealed, by increasing the fee paid for the writ, and by compelling the appellant to deposit a reasonable amount as security for the other side's costs in case the judgment of the lower court is affirmed. By the same act the *summa revisibilis* or *appellabilis* has been fixed in a peculiar manner. In order to appeal from a Superior to the Supreme Court, the appellant must by the decision appealed from have "lost" kroner 1500 (\$400). In other words, the question is not about the amount claimed, but about the amount he gets less than what he claimed. And as to the defendant, suppose he offered to pay \$200, and the judgment is for \$500; in such case he cannot appeal to the Supreme Court, although the judgment is for over \$400, because by the judgment of the Superior Court

he lost \$300, only. Costs and accrued interest cannot be counted as part of the "loss."

We note act of June 18, 1915, about regulation of forests and act of October 1, 1916 making changes in the mining laws.

There has, of course, been quite a deal of legislation dealing with situations created by the war.

JURISPRUDENCE.

DECISIONS BY THE SUPREME COURT OF DENMARK.

1. *What Constitutes a Gift inter vivos?*—J had 60,000 Kr. standing on one book in one bank. About six months before his death and while unable to leave the house, he had a relative K withdraw this amount, and directed him to divide it into 11 specified sums and re-deposit them in the names of 11 other relations. K was to keep these books, to draw the interest and pay it to J for life, and not to advise any of the 11 relatives of the transaction. After the death of J the question was raised, whether these acts of J constituted so many valid gifts *inter vivos* (the question whether they were valid gifts *mortis causa* was not raised). The court decided that such was not the case, the decedent not having deprived himself of the power of revocation at any time. (March 12, 1915.)

2. *Pledge of Life Insurance Policies.*—K had been granted a certain credit by a bank and as security had pledged two life insurance policies. While the bank so held the policies, the insurance company declared a dividend on the policies amounting to over 3500 Kr. The question arose, who was entitled to collect, K or the bank. The court decided in favor of the pledgee, both on general principles, and because the collateral note particularly included "alt Udbytte of Pan tet" (all revenue from the pledge).

3. *Prescription of a Mortgage.*—Under Danish law a mortgage is written as one paper, containing both the acknowledgment of indebtedness and promise to pay, as well as the mortgaging of the property in question. When a deed or mortgage is lodged for record, the judge of the recording court *ex officio* makes a search and notes in his certificate of record such defects in title, incumbrances, etc., as are not excepted in the deed. A bought a certain property, and when his deed was returned from record, it con-

tained a note that there remained unsatisfied of record a mortgage from S to J for 472 Kr., recorded December 8, 1874. It appeared that J still was the owner of the mortgage, and A brought suit against him to have the mortgage obligation "mortified" as the technical expression is. It was shown that for the required time no interest had been paid, nor had the debt otherwise been acknowledged or renewed by any of the successive owners of the mortgaged property, and A obtained judgment. At once J brought suit against A, praying for a decree that the property be sold under the mortgage which was long overdue, and claiming that what had been declared "dead and of no virtue" by the decree of mortification was S's personal obligation only, but not the lien of mortgage, and that there was no known way under Danish law, by which a lien of mortgage could be prescribed or "mortified." By its judgment of February 20, 1913, the Supreme Court dismissed the case, declaring the lien of mortgage to be a mere accessory to the debt. This question has been much mooted in Danish law for the last 50 years. On October 21, 1851, the Supreme Court decided a similar case in the same way. But some writers disputed the correctness of this judgment, and a whole literature sprang up about the matter. It was more than 60 years, however, before the question was brought before the court once more. After the last decision, it may be considered as settled for all time.

4. *Building Restrictions*.—So-called "Villa-Restrictions" had been imposed upon a certain tract of land in a suburb of Copenhagen, particularly to the effect that no building should be erected thereon of greater height than basement, two stories, and mansard. A syndicate bought one of the villas erected in compliance with these restrictions, tore it down, and proceeded to erect a five-story apartment house. Owners of villas within the tract brought action, praying that the syndicate be ordered to remove the building, or at least so much thereof that the remainder would comply with the restriction. The lower court granted the prayer, but the Superior Court reversed and ordered the syndicate to pay as damages such an annual sum as two "Skönsmaend" (jury) appointed by the court might assess. The Supreme Court, however, affirmed the judgment of the lower court, stating that the interest of the other owners in the restric-

tion was not merely a question of money damages. The right to an open view, rural surroundings, fresh air and the like could not be properly compensated for by the payment of a sum of money. The restriction was well known to the syndicate when it commenced its operation, and it must suffer the loss. (May 9, 1913.)

5. *Damages for a Nuisance.*—In the town of Nyborg two owners of ground had erected certain dwelling houses which they rented out. The State Railroad owned adjoining land. Some years later, the railroad erected thereon two roundhouses having between them 15 smoke stacks. The result was enormous quantities of smoke enveloping the dwelling houses, and everlasting blowing of steam whistles, letting out of steam, testing of vacuums and other noises, and the owners of the dwellings suffered losses of rent. In the actions brought by them against the railroad for damages, the Supreme Court upheld their contentions and gave one of them 3000 Kr. and the other 1800 Kr. (May 21, 1913.)

6. *The Diesel Motor in Court.*—T owned a flour mill fronting on one street, the rear line bounding on the rear line of C's property (apartment house) fronting on another parallel street. T installed a Diesel motor to run his machinery. The result was a constant vibration in C's property, causing doors and windows to fly open or shut, and furniture to rock. C's two tenants moved; one of the apartments had remained vacant for more than a year, and the other he had been unable to lease except at a reduced rent. He brought action which was carried to the Supreme Court; the court decided in his favor. (November 3, 1914.)

7. *Damages to a Rabbi.*—The Mosaic Congregation of Copenhagen in 1903 elected Dr. L to the position of head rabbi (Over-Rabiner). The contract contained the clause that Dr. L should have exclusive jurisdiction in all questions of ritual as well as in all other questions concerning the services; also, that the Board of Trustees should have no right to discharge Dr. L as long as he performed the duties of his office. Differences arose, however, especially about admission of non-Hebrews into the congregation, and about the position of children of mixed marriages. The conflict kept on growing, until finally the trustees discharged Dr. L. He brought suit and prayed, principaliter, that he be

reinstated in the office, and in subsidium, that he be allowed damages. The Supreme Court stated that the clause in the contract assuring Dr. L his position, owing to the character of the employment, was not of the kind which could be made the subject of a decree of specific performance, but it allowed Dr. L 80,000 Kr. damages. (June 28, 1912.)

8. *Professional Ethics in Court.*—Lawyer J wrote lawyer S that he had 900,000 Kr. saving fund moneys for investment in farm mortgages at $4\frac{1}{2}$ per cent (naming the saving fund) and asked him whether he could place part of it on the 50-50 basis, the commission to be 2 per cent. In his letter he suggested to S that he advertise in a newspaper 100,000 Kr. for farm mortgages in sums to suit. S did so and received applications. He had the farms offered as security appraised by experts, and then sent the papers to J, he in turn sent them to the saving fund, which turned them all down, because it thought the appraisements too high. This outcome led to a three-cornered correspondence between J, S and the saving fund, whereby it became evident that the saving fund had never asked nor authorized J to invest a single krone for it, but that he had simply taken a long chance. This cost him 602.21 Kr. in damages to S for expenses and time lost. (November 25, 1914.)

9. *War Risks.*—(a) A steamer bringing a cargo of cotton from Galveston to Copenhagen was wrecked November 24, 1914, on the bar outside Esbjerg, and the cargo lost. The cargo was insured in the ordinary manner with two marine insurance companies and in addition with the Danish Maritime War Insurance on Goods. Actions were brought on the two first policies, which excepted war risks. The question was whether the conditions causing the stranding were such as should be considered war conditions. The captain of the steamer did not know of the Danish proclamation withdrawing certain lights, etc., nor of the American notice to mariners of August 29, 1914, publishing the contents of the Danish proclamation; it also appeared that his charts were old and out of date. The defendants claimed immunity under Sec. 78 of the convention of April 2, 1850. The court gave judgment for plaintiff saying that the conditions caused by the various war measures did not cause the stranding. The waters where the stranding occurred are always dangerous,

but the captain had navigated in a careless manner and neglected to inform himself properly; in addition, all of the measures taken by the Danish government might lawfully have been taken in times of peace.

(b) *S. S. Canadia* had been chartered for a round trip from Gothenburg to United States and return. On its return trip it was passing north of the Shetlands when it was stopped by an English cruiser, which sent an officer and prize crew aboard and this officer assumed the navigation of the steamer. He stated to the captain that his orders were to take the steamer to Kirkwall through Fair Isle Sound. It was late afternoon when they came to the entrance of the sound, and the captain proposed that the steamer be stopped over night as the sound was dangerous and no lights were burning, but the navigator refused, continued the course and ran the steamer on Fair Isle where it became a total wreck. The ship had been insured in an ordinary marine insurance company against ordinary maritime risks, and also in the state's war insurance on ships. The owners sued the latter and on November 15, 1915, the court gave judgment in their favor. The causes of the loss were conditions created by the war: the stopping of the ship; a stranger's assumption of command; its forced deviation from its course into another course prescribed by the English government for the sake of its own interests during the war; the fact that it, against the protests of its captain, had been led into dangerous waters where all lights were out.

(c) *S. S. Ingolf* steamed December 23, 1914, from Copenhagen for Hull. That was the last heard of it, except that one of its boats were found floating in the North Sea without occupants. The steamer was insured, both in an ordinary company and in the state's war insurance for ships. The latter was sued, but on November 30, 1915, the court dismissed the complaint. No evidence whatever had been produced to show that war risks were the cause of the loss, and the war insurance covers only such losses "as are proved to have been caused by war, or by such measures as governments have taken by reason of war."

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Gjelsvik, Nikolaus: Handbook of International Law. I. Oslo.

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A great amount of legal and semi-legal literature appears to have been published in Scandinavia during 1915, of which a comparatively small part, however, can be of general interest. Some of it refers to strictly local conditions, but a large part would probably be of interest to administrative officers generally, and especially to those having to do with the administration of so-called social laws. The languages being so little known, we feel that a fuller enumeration would be for the benefit of specialists only, and they may be served through the Sage and other similar foundations and institutions.

A. T.

SPAIN.

LEGISLATION.

Through the courtesy of the distinguished Secretary of the Instituto Ibero-Americano de Derecho Positivo Comparado, of Madrid, Exmo. Sr. Alejo García Moreno, I have received the Repertorio de Legislación Española for 1914, 1915, and up to August, 1916. Although there has been a large amount of legislation, which I have carefully examined, there is a relatively small amount which is of interest for a review of comparative law.

1914.

A royal order of February 19 (*Gaceta*, March 5) provides for indemnity for accidents of labor, of workmen's compensation, for all injuries received by employes of the government engaged in public works and services under the direction of the Ministry of Fomento. All such accidents must be immediately reported, with details, to the head of the Department of Commerce, Industry and Labor, and a further report made every two months as to the condition of the injured employe. The injured employe shall receive all proper medical and surgical attentions, and he shall continue to receive, during the full time of his disabilities, one-half of the wages which he was accustomed to earn. In the event of his death, he is to be buried at the expense of the government. All of the expenses of the accident are to be paid from a fund provided for accidents of labor. In the event of the death of the injured employe, the persons having the right to indemnity on account of his death, are authorized to present a claim for indemnity, in simple form, to the superintendent in charge of the work in the course of which he was injured or killed, which claim is to be investigated and allowed, in the proper case, with a minimum of formalities and delay.

A royal order of July 13 (*Gaceta* of 15) anticipates the end of the war in Europe and the great importance of a new Peace Conference, and appoints a commission of distinguished publicists and statesmen, to "study from the Spanish point of view the labors and program of the Third Peace Conference," to be held at an opportune time at The Hague.

Law of July 23 (Gaceta of 30). This law establishes "conditional liberty" for all convicts sentenced to more than one year of imprisonment, who have already served three-fourths of their time, and are considered worthy of this benefit by reason of evidence which they have given of good conduct, indicating that they are disposed to return to an honest life as good citizens and workmen. For the practical application of such conditional liberty, there is created in the capital of each province, a commission called "Commission of Conditional Liberty," composed of certain provincial officials, a parish curé, and two citizens prominent for their intelligence and philanthropy. After the convict is liberated under this form of parole, his conditional liberty shall be revoked in the event of a repetition of his offense or in case of bad conduct on his part, in which event he returns to prison, and loses the time which he has passed in conditional liberty.

A royal order of August 2 (Gaceta of 3), at the outbreak of the European War, directs the prosecuting officials of the country to prosecute vigorously all calumnies and insulting language used in the public press or in public meetings against the sovereigns of foreign countries or other persons in high positions.

A royal decree of August 11 (Gaceta of 12) declares that learning is free in all its grades and of whatever character it may be.

A royal order of August 17 (Gaceta of 19) directs the establishment in all prisons of a system of judicial identification, by means of anthropometric measurements, photographs, fingerprints and other modern methods of identification of criminals.

A royal order of October 16 (Gaceta of 19) establishes an Arbor Day, called "Feast of Trees," throughout the country, and provides elaborate regulations for the planting of trees under the supervision of local officials. By a subsequent royal decree of January 5, 1915, the observation of the annual Arbor Day in every section of the country is made obligatory, and requires detailed reports of the work done, the number of trees planted, the number of persons taking part in the work, with special reference to individuals who distinguish themselves by their activity in the work and whose work of former years shows the most progress and development.

1915.

The work of selecting the material for this review was done while the writer was confined to his bed in the hospital, and upon resuming the work, he finds to his regret, that the several selections made from the legislation for the year 1915 have unfortunately been lost, so that it is necessary to omit the same. It was of small amount of importance.

1916.

There are only two or three pieces of legislation during the year 1916 which afford matter for review here. The first is an elaborate law, enacted in January, 1916, providing a system of postal savings banks, the details of which do not differ materially from similar legislation of other countries and need not be specially reviewed.

A royal decree of January 20 (Gaceta of 25) provides for the safety of scaffoldings and platforms erected about building operations. It is provided that the material for constructing such scaffoldings shall preferably be of laminated iron beams, and in default of iron, that they shall be constructed of strong, sound lumber without dangerous knots. All ropes used for suspending hanging platforms shall be of hemp, in good condition, and of a size proportional to the weights sustained. All scaffoldings must be provided with one or more ladders securely fastened so as to give easy and safe access to the same. A number of other provisions are made for the security of the works and the safety of the workmen, which need not be specified.

A royal decree of June 19 (Gaceta of 22) established a system of savings accounts for all prisoners confined in penal establishments, for the purpose of ensuing to them upon their liberation, an amount which will permit them to live, while seeking work or employment. The wardens of the several prisons are directed to open such accounts on behalf of the prisoners in the postal savings banks, using for such purpose a proportional part of the amounts credited to the prisoners on account of their labor. The pass-books containing the entries of credits in the savings banks are to be kept by the prison authorities and delivered to the prisoners upon their discharge.

J. W.

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Martinez Ruiz (Antonio): "*El Código Civil interpretado por el Tribunal Supremo.*"

Much attention has, of late years, been paid to the discussion, interpretation, and elucidation of the provisions of both the Civil and Penal Codes of Spain by the foremost legal authorities of the nation; with the result that there probably exists, in no country in the entire world, a better understanding of the rules and precedents arising from, and applicable to its jurisprudence than in the Spanish Peninsula. The present work is especially valuable in this respect. It contains not only the final opinions of the Supreme Court, from its origin, but also a compendious syllabus of each civil case brought before it, with the facts and allegations upon which it was based and the law as applicable to them, forming a most complete and satisfactory summary of the decisions of the court of last resort with reference to each specified section and article of the Code, which renders it doubly convenient for, and useful to, the legal practitioner. (8vo. Price, 10 pesetas.)

Catalá y Gavilá (Juan Bautista): "*Legislación de Obras Públicas Ferrocarriles y Tranvías, Carreteras, Caminos Vecinales, con todas las Leyes, Reales Decretos, y Reales Ordenes, Disposiciones dictadas por los poderes públicos referentes á dichas materias.*"

An excellent digest of the laws and regulations pertaining to public works of every description, railroads, highways and private roads on boundary lines, and the various judicial decisions rendered concerning them. (8vo. Price, 8 pesetas.)

Villaplana Jové (José): "*Legislación eclesiástica, civil, militar, penal y procesal sobre esponsales, matrimonio, legitimaciones y divorcio.*"

The laws governing the marriage relation and the various matters growing out of, or connected with it, generally speaking, coincide with those adopted by the other nations whose jurisprudence is founded on the Code Napoléon. They are, however, still, to some extent, affected by the extraordinary influence always exerted by the Church, and which, centuries ago, caused

the Spanish monarch to be designated the "Most Catholic King," an appellation which he still retains. Ecclesiastical power, has, notwithstanding its ancient prestige, and the implicit reverence with which its ministers have always been regarded by a majority of the people, greatly declined in the Peninsula, as elsewhere, during the last generation. This is particularly apparent in the more liberal interpretation conceded to the marriage laws, and the greater indulgence with which divorce is gradually coming to be regarded. Ever after a formal betrothal in writing, the matrimonial contract cannot be enforced under the code, and only the expenses actually incurred by the rejected party can be recovered by an action-at-law. Alleged damage to wounded feelings, a claim so common and so susceptible of abuse under our practice, is not taken into consideration by the Spanish courts. Even children, who are of age, are required to ask the consent of their parents, a reminiscence of the *patria potestas* of the Romans. Legitimation, always favorably regarded by the civil law, is readily obtained. For those excluded from this privilege by the fears and selfishness of the authors of their being, the foundling-hospital—a state institution dating from the Middle Ages remains. Divorce only causes a suspension of the life in common of the parties interested. In every instance an attempt is made to reconcile them before a decree is rendered.

All of these points, and many others, are referred to the above-mentioned work, which is an important contribution to the literature of this subject. (8vo. Price, 8 pesetas.)

Posada (Adolfo): "*Derecho Municipal comparado.*"

This treatise evinces an extensive and thorough acquaintance with the municipal ordinances by which the principal cities in Europe and America are governed. The comparisons instituted between the enactments of the various municipalities and those of the state by which their legislation is largely controlled are most striking, and of great interest.

This is the first book exclusively devoted to comparative municipal law which the Reviewer has yet encountered, and it certainly reflects great credit on the legal knowledge, diligence, and critical ability of the author. (4vo. Price, 6 pesetas.)

Cruzado Sanz (Félix) : "*Legislación y jurisprudencia de aguas.*"

It is scarcely necessary to remark that there is no branch of jurisprudence which can be of greater importance to the community largely dependent on irrigation for its agricultural prosperity than that relating to the certain, regular, and equitable distribution of water. The Moorish system devised for this purpose, and transmitted to the Castilian conqueror, together with the code of laws and the court to compel its observance, have remained almost intact to our times. Formerly it was in use everywhere throughout the Peninsula, giving to the now arid wastes of La Mancha and Old Castile the appearance of a continuous garden; at present it is confined to the semi-tropical region of Valencia and eastern Andalusia, where its stupendous monuments—immense reservoirs covering many acres; aqueducts scores of miles in length; tunnels hewn from long distances through the living rock; siphons of vast capacity conducted under valley and stream, attest the genius and industry of their builders, and excite the wonder and admiration of the modern hydraulic engineer.

The treatise of Señor Cruzado Sanz deals principally with the more recent legislation on the subject, but the ancient regulations receive due attention, and all easements having reference to the drawing, conducting, and allotment of water are discussed in a lucid and instructive manner. (8vo. Price, 7 pesetas.)

Medina (León) y Marañón (Manuel) : "*Leyes Civiles de España conforme á los textos oficiales.*"

This is a compendium of all the civil statutes of the Spanish monarchy. It is, however, much more than this, for it includes many notes, commentaries, comparisons, and explanations which indicate careful study and are of great practical utility. The reader will find in this comprehensive volume the civil and commercial codes; the rules of civil practice; the law of hypothecation; all royal decrees and orders; the regulations prescribed for the conduct of public officials; the provisions enacted for the collection of customs; and treaties entered into for the purpose of facilitating commercial intercourse with foreign nations. It is an excellent example of the concise and intelligible character of

European legislation, as compared with the usually perplexing, unsatisfactory, and unnecessarily voluminous products of ours. (8vo. Price, 16 pesetas.)

Aguilera de Paz (Enrique): "*Comentarios á la Ley de Enjuiciamiento criminal, Tomo V.*"

The remaining rules of criminal practice before the Spanish tribunals are succinctly set forth and explained in this, the final volumes of this great work, by one of the most accomplished jurists of the Bar of the Peninsula. Like its predecessors, it is distinguished by profound learning, sound judgment, and careful attention to details. The high authority of the treatise, previously established, will undoubtedly be confirmed and increased by the publication of its concluding part, and thus contribute a valuable addition to the already copious supply of commentaries on Spanish penal jurisprudence. (4to. Price, 12 pesetas.)

Odriozola y Grimaud (Carlos de): "*Diccionario de Jurisprudencia Hipotecaria de España (1863-1916).*"

A compilation of all the laws, regulations, and royal decrees concerning the encumbrance of property and the decisions of the Supreme Court rendered with reference to the same, for 53 years, alphabetically arranged for convenient reference. Containing 871 closely printed pages, it is probably one of the most exhaustive works devoted to a single topic of this character ever written. It is also of more than local interest, as its contents are generally applicable to all countries once subject to the Spanish crown, and where the authority of the civil law still prevails. (4to. Price, 15 pesetas.)

Ugarte (Javier): "*Manual de formularios para la práctica del Código de Justicia Militar.*"

The military tribunals of Spain are invested with a far more extensive and important jurisdiction than courts-martial possess in our country. The maintenance of civil order is largely in the hands of the army, and numbers of the *Guardia Civil*, or military police, an organization of the highest character and prestige, are to be met at every turn. None but veterans of large experience,

approved courage, and established integrity are admitted to its ranks. Its members enjoy special privileges, and enrolment in the corps is greatly coveted. Every province in the kingdom is under the command of a captain-general, who invariably takes precedence of the civil authorities when a question arises which demands prompt and decisive action. This supremacy in time of peace seems strange to Americans, under whose government the military is jealously subordinated to the civil magistrate. But in Spain, as well as in the United States, restrictions exist, and the constitutional guarantees must be suspended (an act which corresponds to our suspension of the writ of *habeas corpus*) before the soldier has full sway. The turbulent conditions of Spanish political life, however, frequently render the intervention of the army imperative, and its officers are, when circumstances seem to require it, clothed with almost irresponsible power, a confidence which is rarely abused.

The manual of Señor Ugarte contains all the rules and forms of the military code required for practice before the tribunals of the army during both peace and war. Its excellence and popularity are established by the fact that this is the sixth edition. The work has been thoroughly revised, and has received many additions. (8vo. Price, 4 pesetas.)

(All of the above-mentioned books are for sale by the *Librería de Fernando Fé, 15 Puerta del Sol, Madrid.*) S. P. S.

SWITZERLAND.

CONSTITUTIONAL AND LEGISLATIVE ASPECTS IN 1916.

Despite the tremendous pressure exerted upon all departments of public activity by the war, the Swiss Government has courageously compassed the task of meeting every phase of the many extraordinary situations presented by the world-conflict, while, at the same time the country's governmental needs have been cared for with little diminution of the diligence for which Switzerland is so justly noted at all times. The unlimited powers conferred upon the national executive by Parliament in August, 1914, as will be recalled by readers of the Bulletin, have been continuously exercised—five formal reports having been made to Parliament by the federal executive council touching the exercise of the wide powers confided to it. These powers have

found expression along the lines indicated in last year's Bulletin; a further consideration of their most interesting features, however, need not detain us at this time, but will be deferred for a future occasion.

During the year Parliament has held four sessions: March 6 to 17, June 5 to 24, September 28 to October 4, and December 4 to 22; the first and third of these sessions are known as continuation sessions of the winter and spring. In Swiss constitutional acceptance Parliament holds two regular sessions, in June and December of each year, and continuation sessions in March and September.

The legislation of 1916 marks, as its most notable achievement, the enactment on December 22 of a statute intended to regulate the disposition of Switzerland's vast water power in compliance with the federal constitutional amendment of 1908 which took shape as Article 24 (*bis*) in the constitution. To the federal council is assigned power to deal in the last resort with hydraulic concession; where more than a single canton is concerned, or international interests are affected, along the northern and western borders especially, this power will surely be of grave importance to Swiss economic interests. The important insurance law of 1911, ratified on referendum February 4, 1912, is already, as to that portion, dealing with sickness assurance, in successful operation, the central government co-operating with the numerous local organizations in the development of a national control. The sections of the law creating a national *accident* assurance plan, *occupational and non-occupational*, becomes effective in 1917; its central office is at Lucerne where an insurance appellate court of six judges is now being instituted, and the cantonal governments are to join in forming a body of insurance precedents as the basis of a future insurance code.

The legislation touching a temporary federal war tax, noted in last year's issue, has been supplemented by an ordinance of July 29, 1916, touching minute oversight of any persons or organizations seeking to evade the tax by leaving the country; and an important ordinance has been passed by the federal council laying a special tax on *war profits*, December 18, 1916.

The federal council has likewise issued an elaborate ordinance regulating in great detail the administration of the telephone

service, which is, as is well known, completely under federal control; and the council has also provided under date of November 24, 1916, and by way of carrying out the parliamentary decree of October 3, 1916, for a substantial increase of federal salaries in view of the extraordinary advance in the cost of living. In the closing days of Parliament's winter session, December 11, 1916, the council laid before the federal assembly a recommendation, accompanied by a report in detail, recommending a constitutional amendment for the laying of a stamp tax; this will doubtless be placed before the voters and ratified during 1917.

An important movement, already more than once in evidence, was given definite shape during the December session, looking to the enlargement of the federal executive council from seven to nine members. In 1898 and again in 1913 this was strongly urged; that the enormous pressure of affairs at the present time will definitely demonstrate the need of a larger council seems beyond doubt.

In like manner, the movement looking to election of members of the national council by the method of *proportional representation* has again assumed definite shape. It will be recalled that a proposed constitutional amendment of this character was rejected by the voters October 23, 1910; but on August 13, 1913, an initiative petition, supported by over 109,000 signatures, again proposing this plan reached the federal chancellor. In December, 1916, Canton Zurich voted to follow the large number of its sister cantons which employ this method in electing their legislatures, and this event will doubtless greatly assist if not finally determine a federal adoption of the same principle in the near future.

Canton Vaud has determined to elect its executive council (Council of State) by popular vote, thus bringing nearly every Swiss canton under this plan.

In the closing days of Parliament's December session, the chairmanship of the federal council for the ensuing year, was conferred by votes of the two houses upon Edmond Schulthess, and the vice-chairmanship upon Felix Calonder, who thus became president and vice-president, respectively, of Switzerland for 1917. As often noted in these columns, members of the federal council succeed one another in these offices through parliamentary election by an unwritten law never broken since the

adoption of the federal constitution in 1848. At the national capitol there appeared toward the close of the year a Servian legation, thus making the number of foreign legations at Berne 21; this is nearly double the number of legations maintained by Switzerland abroad, and brings the number of newly created legations at Berne during the progress of the war up to seven, namely, Sweden, Turkey, Japan, Bulgaria, Argentine, Uruguay. Bavaria has its own legation in addition to sharing in the imperial diplomatic representation. Among the cantons we note the usual meeting of the purely democratic and picturesque assemblies of the *Landsgemeinde*; constitutional modifications in the fundamental laws of cantons, Solothurn, Zurich, Glarus, Geneva, Uri, and Basel-City, have been approved by Parliament. The new administrative federal court recently adopted by constitutional amendment is occupying the attention of a commission of experts who will meet at Zurich on February 12, 1917, to discuss the outline of an organization act. The new military penal code, Article 1, has just appeared; it is the work of Professor Haiter, of Zurich, and is being prepared in both German and French versions for publication and discussion.

Three judicial decisions of great local importance to the tariff zones of French Switzerland, but whose details we must reserve for another occasion, have been rendered by the Supreme Court of Appeal at Paris (*cour de cassation*). The cases involve a supposed violation of treaty rights in the free zones lying along the eastern border of Lake Geneva in the French department of Chablais. The international aspects of the questions involved are of great interest, but lack of space will not allow us to discuss them here.

War is not favorable to the creation of legal literature, but we specially note two works of much importance; the one being a continuation of Fick's Commentary on the Federal Code of Obligations; the other treats the Juridical Consequences of the War in Switzerland. (*Commentaire du code fédéral des Obligations*, par F. Fick; tome 2, livraison 6. Neuchâtel; *Les Conséquences juridiques de la guerre en suisse*, par Ed. Kuhn, H. Bonnard, et Ph. Secretan, drs. en droit; édition française, Lausanne.) G. E. S.

4. ASIA.

CHINA.

DECENNIAL ANNIVERSARY FOR CHINA OF THE UNITED STATES COURT.

JUDGE LOBINGIER'S ADDRESS.

We are met this evening to commemorate the decennial anniversary of the United States Court for China. Ten years are not long in the life of an institution, nor is the establishment of a court among the events commonly celebrated, though in 1889 the centennial of our Federal Supreme Court was observed with imposing ceremonies.

But in this case the circumstances are unique. On June 30, 1906, for the first time in its history, Congress established a tribunal to sit and exercise jurisdiction entirely outside of American territory.

Again this organic act was the outcome of long and persistent effort. Extraterritoriality in China had been granted our government in 1844, but it did not require long to demonstrate that this most valuable privilege could not fully be utilized without a system of jurisprudence and trained officials to administer it. The foundation for a jurisprudence was laid in 1848 when Congress extended over all our citizens in China "the laws of the United States so far as necessary and suitable" to execute the treaty. This was amplified and supplemented by the act of 1860 and judicial interpretation has helped to place our jurisprudence here on a firm basis.

But the trained administrator was still lacking. Our ministers and consuls doubtless made the best of a difficult situation but they were laymen as a rule and it was not to be expected that they should find themselves at home in the technical field of law.

In 1881 Secretary Blaine, in an opinion which was transmitted to Congress by President Arthur, recommended that "men of legal training should be chosen for certain judicial offices independent of the consular system and the establishment of a separate system of courts, at least in China, with an appellate court at Shanghai." Bills embodying these recommendations were introduced into Congress in 1882 and 1884 but were not acted upon. Nothing daunted the advocates of a better system continued their efforts. In March, 1906, Congressman Edwin Denby, son

of a former Minister to China, introduced his bill. It passed the Lower House under his guidance, received the support of Senator Spooner in the upper Chamber and became a law on the day we new celebrate.

Some understanding of the court's historic place in our judicial and diplomatic system may be gathered from the following summary of the:

Chronology of American Judicial History in China.

- 1844. Cushing treaty granting extraterritoriality to the United States in China.
- 1848. Act of Congress extending "laws of the United States" over American citizens in China.
- 1858. Treaty providing for punishment of certain crimes by American citizens in China.
- 1860. Act of 1848 amplified and supplemented.
- 1870. Act providing for appeals and appellate procedure.
- 1881. Secretary Blaine's recommendations for establishment of courts with trained judges.
- 1882. Introduction of State Department bill embodying Blaine recommendations.
- 1848. Second bill.
- 1891. Supreme Court decision in *Ross vs. McIntyre*, 140 U. S. 453, affirming constitutionality of powers granted consular courts.
- 1906. June 30. Act creating U. S. Court for China.
- 1907. Decision in *Biddle vs. U. S.*, 156 Fed. Rep. 759, providing a basis for the jurisprudence to be applied by the court.
- 1909. Act relieving Shanghai Consul-General of judicial functions.
- 1916. June 30. Passage of act providing for a permanent building for the court.

The United States Court for China, while the first experiment of its kind on the part of our government, was by no means the pioneer among extraterritorial courts. Fully 40 years earlier the British Government, appreciating the importance of the extraterritorial grant, had established its court here and it was largely the model upon which ours was later constituted. For in this

instance, as in many others, we turned to old England—the mother of our institutions—and learned from her experience.

It would be a lack of appreciation not to acknowledge the helpful and friendly attitude of this pioneer tribunal toward our own. The personal relations between its judges and ours are, I am happy to say, most cordial. Our Bar practices freely in that court and its Bar in ours.

The United States Court for China is a part of the federal judicial system corresponding in grade mainly to the district courts, but taking cognizance of certain causes (such as probate, divorce and adoption) which, in America, are entertained only by the state courts; and exercising also appellate jurisdiction of causes originating in the 14 American consular courts throughout China. This United States Court is considered as located in the ninth judicial circuit and appeals lie from it to the Court of Appeals sitting at San Francisco.

The test of jurisdiction over the person in this extraterritorial court is the nationality of the defendant. Anyone may be a plaintiff, but there must be a defendant subject to American authority in order to confer jurisdiction. The process of the court runs throughout China and anyone therein so subject may be prosecuted or sued in said court.

Sessions of the court are held almost continuously at Shanghai and one regular term is held each year at Tientsin in the north, Hankow in Central China and Canton in the south. Special sessions are authorized at any place in China having an American consulate.

While nominally established by the act of June 30, 1906, the court was not actually opened for business until early in 1907. Since then it has disposed of nearly 600 causes, some of them being of unusual importance either in the legal questions arising or in the amounts involved.

The basis of the court's jurisprudence is the legislation of Congress and it is one of the very few courts (including those of the District of Columbia) which apply none but federal statutes. Where these are deficient resort must be had to the principles of Anglo-American common law and equity.

One of the interesting results of the establishment of the United States Court for China is the blazing of a new path along

which has developed a special phase of our national jurisprudence. It is fitting that this topic should be treated.

The establishment of the United States Court for China did not displace the consular courts. On the contrary they continue to exercise an important, even if limited, jurisdiction;¹ and it is eminently fitting that they should be represented on this program.

Among the 14 American consuls in China, who are *ex officio* judges of consular courts, are a number of lawyers who are also members of our Bar Association.

JURISPRUDENCE.

In the case of *Everett vs. Swayne & Hoyt, Inc.*, the United States Court for China has made an important decision as to the effect of the British Enemy Trading Acts. We give the following extract from the opinion:

This is an action to recover damages from a common carrier for its alleged wrongful refusal to accept and transport goods. The petition avers and the answer admits that the defendant is an American corporation, and the steamship "Yucatan," an American freighter, which

"arrived at the port of Shanghai, China, on May 13, 1916, under charter from said owners to the said defendants for a voyage from the port of San Francisco, California, to ports and places in China and Japan and return to San Francisco, and for other Pacific ports of the United States. (Par. 4.)

"That the said defendants through their said agents on May 3, 1916, and again on May 5, 1916, refused the plaintiff's said application for space and offer to ship as aforesaid by the said vessel on said voyage upon the ground that they did not have space available on said vessel, but that thereafter, to wit, on May 8, 1916, after plaintiff had called to the attention of said agents that they had allotted space to others applying at a date subsequent to the time of plaintiff's application, the said agents of the defendants offered the plaintiff space on said vessel for said

¹ "In civil cases where the sum or value of the property involved in the controversy does not exceed five hundred dollars United States money and in criminal cases where the punishment for the offense charged cannot exceed the law one hundred dollars fine or sixty days' imprisonment, or both, and shall have power to arrest, examine, and discharge accused persons or commit them to the said court." Act of June 30, 1916, 34 U. S. Stats. at Large, Chap. 3934, Pt. 1, 814, Sec. 2.

voyage provided the freight offered by the plaintiff should be passed by the British Consul at Shanghai and provided plaintiff did not offer more freight (or cargo) than the space at the disposal of said agents for the defendants. (Par. 10.)

"That plaintiff declined to agree to the aforesaid conditional acceptance of said offer by said defendants through their said agents in so far as it related to the approval of the British Consul at said Shanghai, and demanded that the defendants through their said agents accept said freight without said last-mentioned condition. That defendants through their said agents refused to comply with said demand." (Par. 11.)

By way of justification for this admitted refusal the answer alleges:

"That defendant's agents, Jardine, Matheson & Co., are British subjects and as such were prohibited and prevented by British law and Orders in Council, rules, regulations, and decrees of the British Government from dealing in any way, directly or indirectly with German subjects, or their agents, or German enemy goods. (Par. 10.)

"That plaintiff at the time mentioned in said petition was acting as an agent for German subjects and the cargo offered to Jardine, Matheson & Co., defendant's agents, by said plaintiff for shipment by the said steamship "Yucatan" was cargo owned by and belonged to German enemy subjects of Great Britain. (Par. 11.)

"That defendant's agents, Jardine, Matheson & Co., were prohibited and prevented by the authorities of the British Government from accepting and shipping the cargo offered by plaintiff." (Par. 12.)

Plaintiff in his replication,

"admits that defendant's agents, Jardine, Matheson & Co., were prohibited and prevented by the authorities of the British Government from accepting and shipping the cargo offered by plaintiff, but alleges that this was because the said authorities of the British Government had placed the plaintiff on what was known as the British blacklist (the same being a list of neutrals with whom British subjects were prohibited from having business dealings) or because the said British authorities suspected that said cargo was owned by German subjects." (Par. 3.)

Defendant having elsewhere admitted that "it was acting as a common carrier" and its refusal to accept plaintiff's freight being thus likewise admitted the naked legal question is presented whether the justification offered for such refusal is sufficient; for no testimony is produced except that of plaintiff and

some depositions in support of the petition. The question of liability must, therefore, be determined largely upon the pleadings.

It is an ancient doctrine that

"common carriers owe to the public the duty of carrying indifferently for all who may employ them, and in the order in which the application is made, and without discrimination as to terms."¹

The doctrine comes to us directly from the common law,² but is probably older, for there was a similar one in the civil law³ which the common law may have borrowed⁴ and, each applies equally to carriers by land or, such as defendant, by water.⁵

Subject to the exceptions presently to be noted this duty is imperative. It cannot be evaded nor, on the whole, limited by contract.⁶ Even where the commodity offered for shipment is under a legal ban (an intoxicating liquor) the carrier cannot refuse to transport it if the particular consignee is not barred from receiving it.⁷

The grounds which will justify a refusal to perform the duty are few. Those usually enumerated in the books are in the quaint language of the early common law, the "Act of God" (a catastrophe not due to human agency),⁸ or of public enemy.⁹ The latter does not include mob violence.¹⁰ Whether it includes a

¹ 6 Cyc. 372. See also *Covington Stock Yards Co. vs. Keith*, 139, U. S. 128, 35 Law. ed. 73; *Toledo, etc., R. Co. vs. Wren* (Ohio), 84 N. E. 785.

² "The early law as to common carriers is thus given in a case of the date of 1683: 'Action on the case, for that whereas defendant is a common carrier from London to Lymmington *et abinde retrosum*, and setting it forth as the custom of England, that he is bound to carry goods, and that the plaintiff brought him such a pack, he refused to carry them though offered his hire. And held by Jefferies, C. J., that the action is maintainable, as well as it is against an inn-keeper for refusing a guest, or a smith on the road who refuses to shoe a horse, being tendered satisfaction for the same. Note, that it was alleged and proved that he had convenience to carry the same; and the plaintiff had a verdict.' *Jackson vs. Rogers*, 2 Show. 327, 89 Eng. Reprint, 968."

³ Hunter, *Roman Law*, 512. *French Civil Code*, Arts. 1782, 1952; *Spanish Civil Code*, Arts. 1601, 1783, 1784; 5 *Corpus Juris*, 378.

⁴ But see contra *Cockburn*, C. J. in *Nugent vs. Smith*, 1 C. P. D. 423.

⁵ 6 Cyc. 368. *Of. note 2 supra*.

⁶ 6 Cyc. 392.

⁷ *Royal Brewing Co. vs. Missouri, etc., R. Co.*, 217 Fed. 146.

⁸ *Id.* 377.

⁹ 6 Cyc. 379.

¹⁰ *Id.*

strike is a question on which the courts have divided. The existence of a strike by other than the carrier's employees, and which blocks all traffic, has been held to relieve the carrier of its duty to receive and transport freight.¹¹ But the decision¹² cited by defendant's counsel is the only one which we have been able to find to the effect that a strike of the carrier's *own employees* will afford such excuse. There is older and ampler authority¹³ (ignored in that opinion) for the contrary doctrine. The question came before the New York Court of Appeals as early as 1859 in a case¹⁴ where a railroad company sought to escape its common carrier's liability on the ground that its engineers had refused to work. In an opinion by an eminent judge (Denio) the court said, in language quite opposite here:

"The position that the defendants are not responsible, because the misconduct of their servants was wilful and not negligent, cannot be sustained. The action is not brought on account of any injury done to the property by the engineers, but for an alleged non-performance of a duty which the defendants owed to the owner of the property. If their inability to perform was occasioned by the default of persons for which conduct they are responsible, they must answer for the consequences, without regards to the motives of those persons. . . .

"Those who intrust their goods to carriers have no means of ascertaining the character or disposition of their subordinate agents or servants; they have no agency in their selection, and no control over their actions. . . .

"Being a corporation, all their business must necessarily be conducted by agents, and if they are not liable for their acts and omissions, parties dealing with them have no remedy at all."

In a similar case¹⁵ arising in Illinois, the Supreme Court of that state said:

"It is, doubtless, the law, that railway companies cannot claim immunity from damages for injuries resulting in such cases from

¹¹ Louisville, etc., R. Co. *vs.* Queen City Coal Co., 99 Ky. 217, 35 S. W. 626.

¹² Murphy Hardware Co. *vs.* Southern Ry. Co., N. C. —, 64, S. E. 873.

¹³ Blackstock *vs.* N. Y., etc., R. Co., 20 N. Y. 48, 76 Am. Dec. 272. Cf. Weed *vs.* Panama R. Co., 17 N. Y. 362, 72 Am. Dec. 474; People *vs.* N. Y., etc., R. Co., 28 Hun. (N. Y.) 543; 9 Am. & Eng. R. Cas. 1; International, etc., R. Co. *vs.* Server, 3 Tex. App. Civ. Cas., Sec. 440. Such was also the Roman Law doctrine, Bowyer, Modern Civil Law, 276.

¹⁴ Blackstock *vs.* N. Y., etc., R. Co., 20 N. Y. 48, 75 Am. Dec. 372.

¹⁵ Pittsburgh, etc., R. Co. *vs.* Hazen, 84 Ill. 36, 25 Am. Rep. 422.

the misconduct of their employees, whether such misconduct be wilful or merely negligent. If employees of a common carrier suddenly refuse to work, and the carrier promptly supply their places with other employees, and injury results from the delay, the carrier is responsible, such delay results from the fault of the employees."

"It is a well-settled principle of law," observed Mr. Justice Biddle, "that a delay caused by a '*strike*' or mob composed solely of the employees of a railroad company . . . will not excuse the company from receiving freight according to its contract or public duty."

The two latter quotations are *obiter dicta*, but they serve to disclose an attitude of the courts elsewhere quite inconsistent with that expressed in the North Carolina case relied upon by defendant's counsel and appear to us to state the sounder and better doctrine. And while the facts above reviewed are not strictly parallel to those in the case at Bar, still if a carrier is not relieved of liability by conduct of its employees which is contrary to its orders it would seem *à fortiori* that exemption could not be claimed where, as here, the agent's acts are not disavowed by the carrier.

Under all the authorities, moreover the obstacle which will excuse the carrier must be one which he cannot remove with proper care. Not even an "Act of God" will relieve him of his own negligence, contributed effectively to the result." So, although a bona fide lack of shipping facilities will excuse the carrier," it must appear that he has used ordinary care to supply them not only from the locality in question, but from others" and

²⁵ Pittsburgh, etc., R. Co. *vs.* Hollowell, 65 Ind. 188, 32 Am. Rep. 63.

²⁶ St. Louis, etc., R. Co. *vs.* Dreyfus, 42 Okla. 401, 14 Pac. 773; Georgia, etc., R. Co. *vs.* Barfield (Ga.), 1907, 58 S. E. 236; Ferguson *vs.* Southern R. Co., 91 S. C. 61, 74 S. S. 129.

²⁷ Hutchinson, Carriers, II, Sec. 495.

²⁸ "For aught the evidence shows to the contrary, the appellant, by the use of ordinary care, could have sent in cars from other division points, without discommoding shippers at those points, in order to supply the temporary needs of shippers at the station of Pryatt.

"Although the demand for stock cars was great and unusual on the division on which Pryatt is situated during the time appellees were seeking to ship their cattle, it was the duty of the appellant to endeavor to meet this unusual demand and to satisfy the requirements of shippers from that station by exercising ordinary care to have the need supplied." St. Louis, etc., R. C. *vs.* Keep, — Mo. —, 168 S. W. 131.

it is no defense that he has failed to prove them or has depended unsuccessfully upon another.²⁰ In a recent Pennsylvania case²¹ it was observed:

"That the refusal to allow plaintiffs a siding connection was an undue and unreasonable discrimination against them, was too clearly established to admit of question. The congested condition of traffic on defendant's road, which was offered in explanation, afforded neither excuse nor extenuation. *The means of protection against such condition was in defendant's own hands.* It was under no duty to haul more coal than could safely and conveniently be transported over its line; but a bounden duty did rest upon it, in limiting the amount to be accepted by it, because of extraordinary conditions, to show no preference as between shippers, and to treat all alike on some equitable basis."

Applying to the case at Bar these principles (for no precedent on all fours with this case has been cited or found) we must inquire whether defendant used sufficient care to avoid the situation which led it to refuse plaintiff's cargo. As we have seen their averment is that their agents were prohibited by their (not defendant's) national authorities from accepting it. But there is no claim that this prohibition was legally effective against defendant or that it could not easily have employed other agents who were exempt therefrom. In the language of the opinion last cited, therefore, "the means of protection against such condition was in defendant's own hands." And wherever such is the case the common carrier's liability continues.

We have seen, too, that the carrier cannot shift the responsibility to his employees, even where they defy his orders and assume an attitude adverse to him. There is no averment here that the acts of defendant's agents were such. For aught that appears the agents' policy was also that of the principal.

²⁰ "It was the duty of the defendant as a common carrier to furnish reasonable facilities for the transportation of commodities along its line. The fact that it had no cars at the time of its purchase of the road, or the fact that another company had failed to supply its cars, is not sufficient answer to this requirement, unless it be shown that reasonable facilities had been provided for the procurement of cars from another company, which had proved inefficient on account of the unprecedented and unexpected emergency." *Missouri, etc., R. Co. vs. Sneed*, 85 Ark. 293, 107 S. W. 1182.

²¹ *Cox vs. Pennsylvania R. Co.*, — Pa. —, 85 Atl. 863.

The briefs contain considerable discussion as to how far the agent's knowledge may be imputed to the principal. It may be conceded that defendant was not presumed to know the British Enemy Trading Acts, but it is hard to conceive of knowledge more important for its agents to communicate than their own restrictions as to those from whom they were permitted to accept freight. Clearly this is a matter which they should have reported to defendant and, as a rule, what they should have done, they are, as regards plaintiff, conclusively presumed to have done.²³

But aside from this presumption we do not see that it would aid defendant if it were proven positively that its agents did not so inform it and that it remained ignorant of the fact that its agents would not accept freight from all who might apply. That would merely show that the agents were acting adversely to their principal, which, as we have seen, will not, according to the weight of authority, relieve the latter from liability.

Defendant emphasize in its brief the fact that its "agents offered to accept the cargo provided plaintiff could procure the consent of the British Consul." But that was a condition and, as we have seen, a common carrier must serve all unconditionally and equally, and while the common law may have been modified for the British Empire by the recent enemy trading acts, these have no application to Americans. Moreover the testimony (Walker's Deposition) shows that others were given space without conditions. Indeed the petition (Par. 8) alleges and the answer (Par. 4) admits that defendant was "accepting offers for an allotting space to the public generally." Besides it seems clear that the agents knew plaintiff could not meet the condition.

We must find, therefore, that defendant has not shown exemption from its common carrier's obligation; that its duty was to receive plaintiff's freight; and that, by its refusal, it incurred liability.

II.

The measure of damages for such refusal varies according to the status of the applicant. If he is the owner of the goods offered for shipment and the object is a sale at the destination, he is entitled to the difference between the market price at the latter and that prevailing at the point of application, less freight

²³ 31 Cyc., 1451, 1640, 1587.

charges.²² To this is sometimes added the element of depreciation while the goods are awaiting shipment,²³ and always the award must be such as will reimburse the applicants for actual loss.²⁴ Thus he is entitled to recover any profits he would have realized from the refused shipment.²⁵ In a case where a coal company²⁶ had been refused proper facilities by a common carrier the Supreme Court of Pennsylvania approved the following instructions to the jury:

"As we look at it, the only known method to get a data from which to estimate what a man is damaged by reason of discrimination in not furnishing care or other facilities of transportation is to give the shipper discriminated against what would have been a reasonably fair profit on whatever is shown to be the fairly probable output of the mine discriminated against, less what was actually shipped from such mine."

The same authority quotes with approval this statement of the doctrine by the Supreme Court of Michigan:

"The profits lost constitute the legitimate measure of damages. The law is not so blind to justice as not to require the defendant to respond in damages, if there is any reasonable basis for their ascertainment."²⁷

In the case at Bar plaintiff was not the owner of the goods offered for shipment and hence could not claim the measure of damages applicable to transportation for sale. But we think it clear from the authorities just reviewed that he is entitled to

²² 6 Cyc. 375, note 72; *Hutchinson, Carriers*, III, Sec. 366; *St. Louis, etc., R. Co. vs. Leder Bros.*, — Ark. —, 112 S. W. 744; *Toledo, etc., R. Co. vs. Wren*, 78 Ohio St. 137, 84 N. E. 785.

²³ *Shoptaugh vs. St. Louis, etc., R. Co.* (Mo. Appl.), 126 S. W. 752.

²⁴ *Delaware. Williams vs. Armour Car Lines* (Del., 1908), 79 Atl. 919.

Kentucky. Louisville, etc., R. Co. vs. Ohio Valley R. R. Co. (Ky., 1914), 170 S. W. 633.

Mississippi. Parish vs. Yazoo, etc., R. Co. (Miss., 1913), 60 So. 322.

Pennsylvania. Hillsdale Coal & Coke Co. vs. Pennsylvania R. Co., 229 Pa. 61, 78 Atl. 28.

Texas. Missouri, etc., R. Co. vs. Empire Express Co. (Tex. Civ. App.), 173 S. W. 222.

²⁵ *Houston, etc., R. Co. vs. Campbell*, 91 Tex. 551; 45 S. W. 2; *Houston, etc., R. Co. vs. Hill*, 70 Tex. 51, 7 S. W. 659; *Louisville, etc., R. Co. vs. Queen City Coal Co.*, 13 Ky. Law Rep. 832.

²⁶ *Hillsdale Coal & Coke Co. vs. Pennsylvania R. Co.*, 229 Pa. 61, 78 Atl. 28.

²⁷ *Hitchcock vs. Supreme Tent*, 100 Mich. 40, 58 N. W. 640.

reimbursement for the loss incurred from the refusal of shipment, including profits therefrom. Another case²² quite analogous in principle was one where plaintiff had contracted to sell railway excursion tickets in reliance upon the defendant company's promise to issue an unlimited number. It was held that the measure of plaintiff's damage for defendant's non-performance was the profit the former would have received from the tickets he had sold.

It is admitted (p. 8) that defendant's freight rates on the "Yucatan" were G. \$16.50 per ton. But it is undisputed that plaintiff had made contracts with his customers by which he was to receive G. \$30 per ton for what he should ship for them. It appears (pp. 8, 12) that these contracts were entered into when freight rates were high in Shanghai and that by the time application for space was made to defendant there had been a fall of almost one-half, a situation so much a part of local history that this court might almost take judicial notice thereof.

There is nothing to indicate that defendant or its agents knew of plaintiff's contracts with his customers. But that was not necessary.²³ Nor was there any speculative element in plaintiff's profits. In some of the cases above cited prospective profits were allowed on estimated sales and probable contracts. But here the contracts were actually made and the proceeds susceptible of exact calculation and it seems to us that the carrier's refusal was an even more direct and proximate cause of the loss of these profits than in the authorities heretofore cited.

But we also think that something must be charged against these profits. Defendant's counsel contends that the true measure of damages here "could only be the difference the rate at which defendant's agents accepted cargo from other shippers and the rate actually paid by plaintiff to ship his cargo by other steamers." He cites no case in which this rule is applied, but it seems reasonable to require than an applicant who is refused service by one common carrier should not charge the whole damage upon the latter if another is ready to provide service which will prevent, or at least reduce, the damage. Such a principle obtains in the

²² *Houston, etc., R. Co. vs. Hill*, 70 Tex. 51, 7 S. W. 659.

²³ *Houston, etc., R. Co. vs. Campbell*, 91 Tex. 551, 45 S. W. 2.

law of master and servant;" it seems equitable and sound and we see no reason why it should not also be applied here.

Plaintiff testifies in response to his counsel's questions:

Q. You had this cargo for shipment at \$30 a ton?

A. Yes.

Q. What ultimately became of it, did you ship it?

A. No, Arnold, Karberg shipped it by some people in Kobe. They shipped the cargo to Kobe and afterwards shipped it to America and I had the cargo from the Tientsin firm shipped to Kobe for transfer to America, but I made no profit on it and the services were absolutely without remuneration; I lost the business and the profit, besides, it took up a lot of time and trouble.

On cross-examination he states further:

Q. You assisted in shipping the Arnold, Karberg cargo through to Japan?

A. Yes, it was done in my name and sent to the godown and insured in my name, and I can vouch that it was not in the name of Arnold, Karberg who made the arrangements.

Q. In name you were the shipper?

A. As forwarding agent.

Q. Although you could not ship it yourself still the German firm could ship it?

A. Yes, they did it through a Japanese firm and it was not shipped in their own name.

Q. You made no effort to ship it yourself?

A. Well, I did, but they were satisfied to take it over and did it themselves.

On being asked "the rate across the Pacific" for this shipment he replied:

I estimate between \$25 and \$26 including all things such as lighterage, commissions, etc.

Elsewhere he says:

If I could get cargo away by the Yucatan at \$16.50, why should I go to the Japanese lines for \$25 or \$26 a ton?

"26 Cyc. 1006, 1014. "When the defendant knew that the transportation would not be furnished, he was not bound, in order to recover for the wrong done him, to prepare and offer the wood. As argued by his counsel, it was his duty to pursue that course best calculated to lessen the damage resulting from the wrong." *Houston, etc., R. Co. vs. Campbell*, 91 Tex. 551, 45 S. W. 2.

It seems clear from this that plaintiff's customer was given a rate by the Japanese company about G. \$4.50 per ton less than that fixed in the contract as "Forwarding Agent." He admits in effect (pp. 10, 13) that he did not ask, and hence was not refused, space from said company for this particular cargo, and without a positive showing to that effect we think it would be inequitable to charge upon the defendant more than the difference between its rate and that of the Japanese company which would be about G. \$9 per ton.

On the other hand we do not think defendant has shown that other shipping facilities were available to plaintiff at the time. After stating that "the British firms and their allies would not do business with me," he testifies:

Q. When the Yucatan shut out that cargo you took no efforts to ship by other lines and dropped the matter?

A. No, I beg to differ there. I tried to make negotiations with Anderson, Meyer, and other steamship people.

Q. You restricted your efforts to American steamers?

A. Yes, I might say that I tried to get a Vladivostok steamer, but the Yucatan was the only vessel I could take advantage of.

We might almost take judicial notice that the lines mentioned in plaintiff's testimony included all of these then operating and the burden was on defendant to show that the Japanese company was not the only one open to plaintiff.²⁶ We must therefore find that he is entitled to recover as damages for defendant's refusal the difference between its rate and that of the Japanese company which was, as we have seen G. \$9 per ton.²⁷

JAPAN.

LEGISLATION.

While the year of 1916 witnessed the enactment of many new acts and amendments, but few are of interest to the student of general jurisprudence. Therefore those are discarded which are deemed of no general interest.

By the act of July 8, 1916, Law No. 42, known as "Simple Insurance Law," the Imperial Government of Japan enters into the insurance business. Under the provisions of this act, the Imperial Government insures any person to the extent of 250 yen (\$125). The value of the policy is expressly fixed by law at

²⁶ 26 Cyc. 1006.

250 yen—neither more or less; and the insured is expressly limited to one policy. Thus, though the insured is the holder of more than one policy, in violation of the law, his recovery is limited to 250 yen.

No physical examination is required as a condition precedent to be insured; old and young, strong and weak, are alike equal before the law, and have equal opportunity to be insured.

The Imperial Government reserves to itself the privileges of allowing but partial indemnity instead of the full amount where death claims the insured within two years from the issuance of the insurance policy.

A recovery of the entire amount of indemnity is unconditionally allowed in case of death from certain specified contagious diseases, namely: (1) Typhoid fever, (2) cholera asiatica, (3) smallpox, (4) typhus fever, (5) scarlet fever, (6) diphtheria, (7) plague or pest, (8) dysentery.

No recovery is allowed where death is the result of self-destruction of any kind whatever, or forfeiture of life under capital punishment, or murder committed by the beneficiary, or with his knowledge, or at his instigation with the object of profiting thereby.

The act of March 15, 1916, is of interest to the student of international law, and provides that a Japanese woman who marries an alien thereby *ipso facto* loses her citizenship and acquires that of her husband. Where, however, she is incapable of becoming a citizen under the laws of her husband's nationality, she still retains her Japanese citizenship.

This act removes certain difficulties which have long perplexed the diplomatic circles.

In passing, attention may be called to a valuable and interesting note in Moore's Digest of Int. Law, Vol. 3, p. 458, and Sect. 1994 of U. S. R. S. and also the case of *Kelly vs. Owen*, 7 Wall 496.

J. G. K.

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This is the first publication in English of a comprehensive presentation of Japanese law and jurisprudence. The author has long been a resident and practising lawyer in that country and possesses the highest qualifications for the task undertaken. He modestly calls the work "an outline description of the system of law regulative in Japan," but it is in fact a scholarly treatise of the organic governmental principles, basic legislative declarations and fundamental jurisprudence of that country. Moreover, it is arranged logically, the doctrines are explained historically and the principles are supported throughout with citation of legislative authority in actual force.

The Table of Contents best presents the scope of the work: Book I, General Discussion of Japanese Jurisprudence, (17 chapters, embracing Historical Sketch, Law Making, Interpretation, Classes of Laws, Sources of Law, Execution of Laws, Legal Duties, etc.); Book II, Constitution and Imperial House Law (11 chapters, embracing Imperial Prerogatives, Law Courts, Administrative Law, Criminal Code, Civil Code, Commercial Code, Registration, Real Estate—Commercial and Civil—Code of Civil Procedure, Code of Criminal Procedure, International Public Law, International Private Law).

Under subheads of these chapters, the author seems to have anticipated all phases of right and remedy which may arise in the affairs of men and reveals a degree of legislative foresight and juridicial development quite abreast of Occidental countries, but not at all surprising to those who realize the great political and civic strides Japan has made in the last 50 years in achieving her present deservedly recognized place among the most enlightened nations of the world. Apropos of this particular feature, the chapters showing how her law developed as a national and particular system and yet absorbed the juridicial principles of other systems from the seventh century down are the most interesting of the whole book, the fruitful research and manifest discriminating conception of the author enabling him to lucidly portray the gradual blending of basic tribal jurisprudence similar to that of early England with the doctrines of the civilians, the precedents of the English Common Law and the principles of public and private international law generally accepted among civilized nations.

The Occidental student will find no unique or difficult phase except, perhaps, under the heads treating of the rights and duties

arising out of the family unit or the domestic relations and the law of succession, in which the ancient Japanese feudal laws to a large extent survive, although somewhat modified by the Roman law. There have been some modifications, but many yet hold fast to the principle that the family head alone is *sui juris*, and that the other members are *alieni juris* as provided by the "Seventeen Articles," compiled by Prince Seitoku about 640 A. D. and venerated like the "Twelve Tables" by the Romans. This phase of the Japanese law was most learnedly and exhaustively treated by our late lamented fellow editor of this staff, Dr. Masuji Miyakawa, in the *Bulletin* of 1910 (Annual Bulletin, No. 3, p. 47, "*Japanese Laws of Domestic Relations*").

The civil, criminal and commercial codes and the codes of procedure, beyond the national features always varying in different countries, are basically modern Roman law, that is, doctrinally resting on the *corpus juris civilis*, but largely conforming to the modifications embraced in the code of all civil law countries. Much has been borrowed from the Imperial German Civil Code and the German Commercial Code, representing the radical modern legislative declaration of the Roman law as "received" by the Germans. There is also a material portion of the code Napoleon in which the Roman law was likewise considerably modernized by radical treatment. So, too, there are familiar and settled principles of the English common law expressed in specific terms and others of elastic applicability set in more exact text form than any English or American court has ever dared to employ.

The care of the author is especially shown in the copious and ready topic index which crowns the work with utility and gives earnest of its reliability. Altogether there is reason to be grateful to Dr. deBecker for enabling the English-speaking lawyers of the world to have at hand so intelligent a compendium of Japanese jurisprudence.

W. W. S.

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